(28,607)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 652.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER SECTION 206 OF TRANSPORTATION ACT OF 1920, &c., PETITIONER,

vs.

L. N. DANTZLER LUMBER COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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1 **"CAPTION"**

The State of Mississippi, }
County of Harrison. } (Min. Book 18 page 311)

Be it remembered, that a regular term of the Chancery Court of Harrison County, State of Mississippi, was begun and held at the Court House of said County and State, in the City of Gulfport, in said County and State, on the Third Monday in June, A. D. 1920, being the 21st day of June, A. D. 1920; the same being the time and place fixed by law for holding said Court.

There were present and in attendance on said Court so holden as aforesaid, the Honorable D. M. Watkins, Chancellor of the Eighth Chancery Court District of said State of Mississippi, and therein solely presiding; Jos. W. Havens, Sheriff of said County and State; and Eustis McManus, Clerk of the Chancery Court of Harrison County, State of Mississippi.

2 **"ORIGINAL BILL OF COMPLAINT"**

State of Mississippi,
Harrison County.

In Chancery Court to June Term, 1918.

No. 5552

L. N. Dantzler Lumber Company, a corporation, Complainant,

vs.

The Texas and Pacific Railway Company, The Vicksburg, Shreveport and Pacific Railway Company, The Alabama and Vicksburg Railway Company, The Louisville and Nashville Railroad Company, The Gulf and Ship Island Railroad Company, The Yazoo and Mississippi Valley Railroad Company, The Illinois Central Railroad Company, The Mobile and Ohio Railroad Company, Defendants.

To the Honorable W. M. Denny, Jr., Chancellor:-

Complainant would respectfully show unto the Court that it is a corporation organized under the laws of the State of Mississippi, and having an office at Gulfport, Harrison County, Mississippi. That the defendant, The Texas and Pacific Railway Company is a corporation organized under the laws of the United States, incorporated by Act of Congress of March 3rd, 1871; that said defendant is a non resident of the State of Mississippi, and has offices at various points in the State of Texas, and an office at Ft. Worth, Texas; that its post office address is Ft. Worth, Texas, and also New Orleans, Louisiana, and that L. M. Sullivan, of New Orleans, Louisiana, is the agent of said company for the service of legal process and process can be served on said agent.

3 That the defendant, Vicksburg, Shreveport and Pacific Railway Company is a corporation organized and existing under the laws of the State of Louisiana, and is domiciled at Monroe, Parish of Ouachita, State of Louisi-

ana; that said defendant also has an agent at Vicksburg, Mississippi, upon whom process can be served.

The defendant, Alabama and Vicksburg Railway Company is a corporation organized under the laws of the State of Mississippi, and maintains an office at Vicksburg, Mississippi, and an agent upon whom service of process can be had.

That the defendant, Louisville and Nashville Railroad Company is a corporation organized under the laws of the State of Kentucky and maintains an office in Harrison County, Mississippi, and has agents in Harrison County, Mississippi, upon whom service of process can be had.

That the defendant, Gulf and Ship Island Railroad Company, is a corporation organized under the laws of the State of Mississippi, with agents and its principal office at Gulfport, Harrison County, Mississippi.

That the defendants, Illinois Central Railroad Company and Yazoo and Mississippi Valley Railroad Company, are corporations organized under the laws of the State of Illinois and Mississippi, respectively, and have offices and maintain agents upon whom process can be served at Jackson, Hinds County, Mississippi.

That the defendant, Mobile and Ohio Railroad Company, is a corporation organized under the laws of the State of Mississippi, and has an office and agents at Meridian, Lauderdale County, Mississippi, upon whom service of process can be had.

That on the 10th day of October, 1917, the defendant, The Texas and Pacific Railway Company, agreed with the complainant, in consideration of a freight rate to be paid
4 by Complainant, to transport for complainant from Ft. Worth, Texas, to Howison, Mississippi, ten carloads of cattle, the property of complainant, and in pursuance thereof a bill of lading was issued by said defendant, The Texas and Pacific Railway Company, to Clay-Robinson and Company, live stock commissioners and owners of stock yards at Ft. Worth, Texas, who were the shippers of said cattle and acting for complainant, whereby said defendant agreed, as aforesaid, to transport said ten carloads of cattle, the property of complainant, from Ft. Worth, in the State of Texas, to Howison, in the State of Mississippi, consigned to complainant; and said Clay-Robinson and Company, com-

plainant's agents and commissioners, thereupon delivered said carloads of cattle to said defendant to be transported. A copy of said bill of lading is hereto attached, marked Exhibit "A".

Complainant further alleges that said defendant, The Texas and Pacific Railway Company, only transported said shipment of cattle over its own line to Shreveport, in the State of Louisiana, and there routed said shipment over roads selected by it, to-wit:- The Vicksburg, Shreveport and Pacific Railway Company, The Alabama and Vicksburg Railway Company, and the Gulf and Ship Island Railroad Company, defendants, herein, and that the total freight charges for said shipment, were divided among said several carriers, in a manner unknown to complainant.

That Complainant paid all charges demanded of it by said carriers for freight on said shipment of cattle.

Complainant further avers that the defendant, The Texas and Pacific Railway Company, and all the other defendants over whose line said shipment of cattle passed and was transported, owed complainant the duty to transport said shipment of cattle with reasonable despatch, and to see that said shipment of cattle suffered no unnecessary or unreasonable delay, but that in fact, it was the duty of said defendants to so transport said shipment that it be delivered at its destination in the shortest time possible, on account of the fact that shipment of cattle by rail is attended with more or less danger [or] injury to the cattle, that they are unable to lie down and are compelled to stand in crowded cars, that animals often injure each other in the car, the facilities for feeding and watering are bad, and the longer cattle are being transported, the greater the chance and opportunity for injury to the cattle. That besides this, in cases where cattle remain too long in cars they lose weight and otherwise [deterioate] in value. That all of these facts were well known to all of the defendant railroad Companies transporting said cattle, at the time of the signing of the bill of lading herein referred to and at the time they were being transported by said several defendants.

That although said defendants owed complainant the duty to promptly transport said shipment of cattle, and also to safely transport said cattle without injury to them, the said

defendants so negligently handled said cars of cattle, both as to management and transportation as to result in the death of many of said cattle, and the injury to all as hereafter alleged.

That although said shipment of cattle could have, by the exercise of reasonable care and diligence have been transported from Ft. Worth, to point of destination in 24 hours, yet there was consumed by said carriers in transporting said cattle one hundred and ten and one-half (110½) hours, which was a wholly unreasonable and inexcusable length of time to be consumed in transporting said shipment of cattle, and that during said time said cattle were not unloaded and fed and watered as they should have been, but were only fed twice during said long period of time.

That as a result of the negligent handling of said
6 cattle and the long delay in transit without having been unloaded, fed or watered, except as above stated, cattle in said shipment of the value of $600.00 died during transit and immediately after reaching destination; that said cattle are dying from time to time since their arrival and since the filing of the claim for damages in this cause with said carriers as provided by said bill of lading; That said herd constituting said shipment has greatly [deterioated] in value due to said long delay in transit and said rough handling and said cattle have lost greatly in flesh and have been seriously injured and have suffered and still suffer and will continue to suffer a reduction in weight and in vitality. That it will take a long period of careful treatment to place said herd constituting said shipment back in the condition it would have been had not said defendants so long delayed said shipment. That on account of the matters and things hereinabove set forth complainant has been damaged in the sum of Fifty-six Hundred Dollars ($5600.00).

That complainant rendered to said defendant Texas and Pacific Railway Company a claim therefor, payment for which claim was refused. A copy of said claim filed with said defendants is hereto attached marked Exhibit "B".

That complainant is not advised exactly on what line of railway, or which of the defendants participating in said haul, caused said injury and delay, but complainant is ad-

vised and so charges on information and belief that the greater part of said delay and injury occurred on the line of the defendant The Texas and Pacific Railway company, and that some unnecessary and unreasonable delay and rough handling occurred on the lines of the other defendants who were carriers of said shipment.

That the defendants, Louisville and Nashville Rail-
7 road Company, Gulf and Ship Island Railroad Company, Illinois Central [Raulroad] Company, Yazoo and Mississippi Valley Railroad Company, the Mobile and Ohio Railroad Company, are indebted to said defendant, Texas and Pacific Railway Company, but in what amounts complainant is unable to say, and that said Gulf and Ship Island Railroad Company, Louisville and Nashville Railroad Company, Illinois Central Railroad Company, Yazoo and Mississippi Valley Railroad Company and Mobile and Ohio Railroad Company will be further indebted to said defendant in the future, and pending the trial of this cause, and that this complainant is entitled to subject said sums in the hands of said Louisville and Nashville Railroad Company and Gulf and Ship Island Railroad Company, Illinois Central Railroad Company, Yazoo and Mississippi Valley Railroad Company and Mobile and Ohio Railroad Company to the satisfaction of its claim against said Texas and Pacific Railway Company, who is a non-resident of the State of Mississippi, and has no [fficer] in this State upon whom service of process can be had.

Premises considered, complainant prays that summons issue to said defendants, upon whom personal service can be had, and that publication issue for said non-resident defendant upon whom personal service cannot be had, and that said defendants be required to answer this bill of complaint at the June 1918 term of this Honorable Court, and that said defendants Louisville and Nashville [Raulroad] Company, Gulf and Ship Island Railroad Company Illinois Central Railroad Company, Yazoo and Mississippi Valley Railroad Company and Mobile and Ohio Railroad Company be required to answer stating what funds of said defendant, The Texas and Pacific Railway Company, they have in their hands at the time of service of process in this cause and what amounts they have had between the time of service

of process and the time of answering this bill, and
8 what amounts they have at the time of answering the bill in this cause, and whether and in what amounts they will be indebted to said Texas and Pacific Railway Company in the future, and that a decree be rendered against said Texas and Pacific Railway Company and the other defendants participating in said carriage of said shipment for said sum of Fifty-six Hundred Dollars ($5600.00) with interest thereon from October 1st, 1917, at six per cent per annum, and all costs of this suit, and that said funds in the hands of the said Gulf and Ship Island Railroad Company, Louisville and Nashville Railroad Company, Illinois Central Railroad Company, Yazoo and Mississippi Valley Railroad Company, and Mobile and Ohio Railroad Company be subjected to the satisfaction of the demand of complainant and of said decree, in so far as it relates to said Texas and Pacific Railway Company, and that personal decree be rendered against all defendants upon whom personal service of process is had.

And Complainant prays for all such other, further and general relief as in equity and good conscience it might be entitled to receive.

And as in duty bound, etc.,

White & Ford,
Solicitors for Complainant.

State of Mississippi, }
County of Harrison. } ss.

Personally appeared before the undersigned authority in and for said County and State, B. C. Lawler, agent for the L. N. Dantzler Lumber Company, complainant in the foregoing cause, who states on oath that the matters and things set forth in the foregoing bill of complaint are true as therein stated.

B. C. Lawler.

9 Sworn to and subscribed before me this 25th day of March, A. D. 1918.

(Seal)

W. R. Barber,
Notary Public.

Filed Mar. 25, 1918.
Jno. J. Murphy,
Clerk.

10 **"EXHIBIT 'A" TO BILL OF COMPLAINT"**

The Texas and Pacific Railway Company

Interstate Live Stock Bill of Lading

(Not negotiable)

Exhibit "A" (Copy)

Notice to shippers.

The freight rates for interstate shipment of live stock as shown by the published tariffs of this company, and connecting carriers, vary in proportion to the declared value of the animals shipped; and in case of loss or injury the liability, if any, of the carrier shall not exceed such value. The shipper is therefore cautioned to place the true value on the animals. The values of the animals for interstate shipment given in this contract are declared by the shipper as the true value thereof.

Contract.

Car Nos	Initials	No Head	Way-Bill Series No
40418	M P	26	
1967	CMSTP	30	
45229	M	30	
5157	B&M	30	
77731	SP	30	
68948	AT	30	
9428	CNOTP	30	
8414	JGN	30	
643536	PRR	29	
5434	BM	29	

10-36 ft. cars ordered

11

Val Cows 50.00
" Bulls 75.00
" cfs 35.00
36 hr release

: Executed at Ft. Worth B Station. This agreement, 10/10-1917 made between the Texas & Pacific Railway Company, the carrier, and Clay Robinson Com Co., the shipper, Witnesseth: That for the consideration and mutual covenants and conditions herein contained, the carrier will transport for the shipper, the live stock described below, and the parties in charge thereon, as hereinafter provided, viz:—

10 cars, said to contain 294 head of cattle from Ft. Worth B Station
(Must be station on this line)
To Shreveport
(Must be station on this line)
Consigned to L. N. Dantzler Lumber Co. at
(Consignee)
Howison, Miss.
(Destination)

at published tariff rates based upon the valuation declared herein, which valuation shall define the liability of the carrier as herein provided: Therefore in consideration of said rates, the execution of this contract, and for other considera-

tions, it is mutually agreed between the parties hereto, as follows:

First: That the live stock covered by this contract is not to be transported at any particular speed, within any specified time, nor delivered at destination at any particular hour, nor in time for any particular market.

Second: That the carrier is exempt from all liability for loss or damage to persons or property arising from derailment, collision, fire, escapement from cars; heat, suffocation, crowding, maiming, or other accidents or causes not arising from the negligence of the carrier; and the shipper hereby assumes all risk of injury to or loss of his stock because of their being wild, unruly, weak, or any inherent vice or defects, or maiming each other, or themselves, and all risk of heat, suffocation, or other results of being crowded in the cars, or of being injured or destroyed by fire from any cause whatsoever, or because of burning hay, straw, or other materials used for bedding the cars or feeding the stock, or for any other purpose, when not caused by the negligence of the carrier.

12 Third: That the shipper, at his own risk and expenses, is to furnish feed and water, and to take care of, feed, water, and attend to the stock while in the stock yards of the carrier, or elsewhere, awaiting shipment, and while the same is being loaded, transported unloaded and reloaded, and to load, unload and reload the same at feeding and transfer points, and [whereever] the same may be unloaded and reloaded for any purpose whatever, and hereby covenants and agrees to hold said carrier harmless on account of any loss or damage to his stock while being so in his charge, and so cared for and attended to by him, or his agents, or employees, and in case the carrier should for any reason find it necessary to [furnished] feed and water, and to undertake to water and feed the stock, it shall not be liable for insufficient, unwholesome, or unsuitable supplies, or the imperfect discharge of such undertaking.

It is further agreed that in all cases when the carrier shall furnish for the accommodation of the shipper, laborers to assist in loading or unloading his stock, they shall be entirely subject to his orders, and deemed his employes while so engaged, and he hereby agrees to hold the carrier harmless on account of their acts, nor shall the carrier be liable for damages or injury to any stock arising from loading bulls, jacks, stallions or vicious animals of any description, loose in cars with other live stock, or from loading calves in cars with adult cattle, or from loading stock of different kinds in the same car.

Fourth: That when the shipper undertakes to furnish bedding, or to bed the cars, the carrier shall not be held liable for insufficient, unsuitable, or improper bedding.

Fifth: No carrier or party in possession of any of the live stock herein described shall be liable for any loss thereof, or damage thereto, or delay caused by the act
13 of God, the public enemy, any character of war or insurrection, (domestic, or foreign, international or civil) quarantine, dipping inoculating or testing of cattle or other live stock to comply with United States, or State laws, the authority of law, mobs, strikes, or threatened or actual violence from any source, or the act or default of the shipper or owner, or for difference in weights caused by natural shrinkage or discrepancies in weights; and it is expressly agreed that the carrier shall not be liable for any delay or damage sustained by the stock, or any expense incurred by the shipper by reason of any enforcement, or attempted enforcement, by Government officers, of quarantine regulations, either Federal, State, County or Municipal, whether such officers act lawfully, or unlawfully, or by reason of the existence of any quarantine regulations or law, Federal, State, County or Municipal, and, the shipper further agrees that the carrier shall not be liable for any mistake or inaccuracy in any information furnished by the carrier, or any of its agents or officers, as to such quarantine regulations, or laws, it being expressly understood that if any such information is furnished by the carrier, or any of its agents or officers, it is furnished as a pure gratuity and without any warrant or guarantee of its accuracy.

Sixth: It is mutually agreed that the carrier may select the route for transportation, unless otherwise endorsed hereon; and that every carrier shall have the right, in case of physical necessity, to forward the stock by any railroad, or route, between the point of shipment and the point of destination.

Seventh: This contract is subject to correction as to rate, weight and classification, so as to conform to the rates, rules, and regulations legally applicable to the shipment.

Eighth: It is mutually agreed and understood, that
14 in event of loss or depreciation in value of any or all of said live stock, by reason of delay or physical injury thereof or thereto, it is right and proper that the carrier shall be notified of such conditions that it may have the opportunity to inspect the animals before they are removed from the place of destination or mingle with other stock, that such conditions may be verified and recorded as evidence, and the shipper hereby covenants and agrees to so notify the carrier's agents at destination; or its nearest or other convenient local depot or general agent or agents, pointing out all physical injuries or other conditions contributing to such loss, depreciation, or injury, and hereby agrees that the failure to so notify will be deemed and held to be conclusive proof that such stock was not lost, depreciated, or injured, in value in any manner whatsoever through negligence of the carrier.

It is further mutually agreed, in case the carrier maintains an agent at destination, the shipper or his authorized attendant in charge will sign the carrier's regular form freight receipt for said shipment when delivered and will indorse thereon memoranda, fully descriptive of any loss or depreciation in value or physical injury of or to such stock, and the holding of such freight receipt by carrier, without such indorsement, shall be deemed and held to be conclusive proof that the shipment was, at the time of delivery, in good order and free from any damage caused by the carrier's negligence; and, the shipper further expressly agrees, as a condition precedent to his right to sue, or to recover for any damages of whatever character, or for any loss of, or injury,

to his stock during transportation thereof, or previous to the loading thereof for shipment, or for any damages in any way arising out of, or connected with either this shipment, or this contract, that he will give definite written notice of his claim to the nearest, or any other convenient local depot or general agent or agents, of the carrier, or carriers, sought to be held liable, within one hundred twenty (120) days after the date of the accrual of his cause of action, which notice shall state the number of animals dead, or injured, the character of the injuries and the amount of damages claimed; and that should he fail from any cause to give the carrier, or carriers, such notice, within one hundred twenty days from date of the accrual of his cause of action, his failure to do so, shall be a complete bar to any recovery on any and all claims, and the filing of suit for such loss or damage shall not be a compliance with this requirement, its purpose being to give the carrier, or carriers, an opportunity to investigate and settle before filing of suit, and such notice cannot be waived; and the shipper further agrees that no suit or action against the carrier, or carriers, for the recovery of any claim, by virtue of this contract, or this shipment, shall be valid or sustainable in any court of law or equity, unless such suit or action be commenced within two years after the cause of action shall accrue; and should any suit or action be commenced against the carrier, or carriers, after the expiration of the aforesaid two years, the lapse of time shall be taken and deemed conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

Ninth: This contract does not entitle the holder hereof, or any other person, to ride on any train except on the train in which the live stock is transported, and then only for the purpose of caring for such live stock, nor to return passage unless return passage is authorized under the rules appearing in the tariffs of the carrier, which are hereby made a part of this contract, and unless the contract is presented to a properly authorized agent of the carrier for return passage within the time prescribed by the rules of the carrier, all of which is hereby made a part of this contract. That such return passage is authorized

only in the manner set forth above, and shall be used by such persons only, whose names are written herein namely: (1)..... (2)..... (3)..... and who actually accompanied the live stock for the purpose of caring therefor, and shall not include minors, women, or persons unable to perform the service of caring for live stock in transit, as required by this contract; and persons to be entitled to return passage, under the terms of this contract shall perform the journey within the time and in accordance with the regulations of the carrier. That the person, or persons, while in charge of live stock covered by this contract, shall remain in the caboose attached to the train while the same is in motion, and that whenever such person or persons, shall leave the caboose, or pass over, or along the cars or tracks, they shall do so at their own risk of personal injury from every cause whatever, and the carrier shall not be required to stop or start its trains or caboose from depots or platforms or to furnish lights for the [accomodation] or safety of such persons. No employee of the carrier is authorized to waive any of the foregoing provisions.

Tenth: It is further stipulated and agreed between the parties that in case the live stock mentioned herein is to be transported over the road of any other railroad company, each carrier shall be released from liability of every kind after the live stock shall have left its road, and the shipper hereby so expressly stipulates and agrees; it being distinctly understood that the liability of the carrier in respect to said live stock, and under this contract, is limited to its line of railway and will cease, and its part of this contract be fully performed upon [delivered], or tender, to its next
17 connecting carrier, of the live stock mentioned herein and receipted for hereby; the understanding of both parties being that the carrier shall not be held or deemed liable for anything in connection with the live stock beyond its own line of road, excepting to protect the rate of freight. It is expressly agreed, however, that the conditions of this contract shall inure to the benefit of all carriers transporting the live stock shipped hereunder, unless they otherwise stipulate, but in no event shall one carrier be liable for the

negligence of another; provided that the foregoing shall not affect the statutory liability of any carrier. But nothing herein contained shall be held or deemed to deprive successive carriers of the right to require the execution by shipper of a separate contract, covering the shipment over each of such connecting carrier's lines before the shipment is carried forward on the line of any such connecting carrier. If the live stock is received from a connecting carrier, and the shipper requires the live stock to be transported in the cars in which they reached this carrier's line, he assumes all responsibility for the kind and condition of said cars, and the manner in which they were bedded and the live stock loaded, and waives any right to hold this carrier liable for any delay, damage, or injury, to live stock which occurred prior to the exact time at which the live stock was received by this carrier for transportation.

Eleventh: In making this contract, the shipper acknowledges that his attention has been directed to the carrier's different rates, based on varying valuations, and he declares the true value of the live stock are inserted in the table immediately following, and that the rates published by the carrier applying to stock of these valuations, apply to this shipment:

18		Declared value:			Declared value
Number of head	Description	per head to be entered by shipper.	Number of head	Description	per head to be entered by shipper.
.....	Bulls	$75.00	.....	Colts	$.....
.....	Oxen	$.....	.....	Mules	$.....
.....	Steers	$.....	.....	Jacks	$.....
.....	Cows	$50.00	.....	Jennets	$.....
.....	Calves	$35.00	.....	Burros	$.....
.....	Stallions	$.....	.....	Hogs	$.....
.....	Geldings	$.....	.....	Sheep	$.....
.....	Mares	$.....	.....	Goats	$.....

In the event that the shipper does not fill in the above table of valuations, then he does now hereby agree that the

live stock shipped is "[Oridinary] Live Stock" and that the values are not in excess of the amounts here following, and that in no event shall the carrier be liable for any greater sums than those next mentioned, to-wit:—

Each horse or pony (gelding, mare or [stallions]),

Mule, jack or Jenny	$100.00
Each [Colts], under one year	50.00
Each ox, bull or steer	50.00
Each cow	30.00
Each [burrow]	30.00
Each calf	10.00
Each hog	10.00
Each sheep or goat	3.00

It is further agreed, that in case of total loss of any of the live stock, for which the carrier may be liable, payment will be made therefor on the basis of—and in no event exceeding—the actual cash value thereof at the place and time of shipment under and as specified in this bill of lading,
19 including the freight charges, if paid; and, in case of damage (physical injury) or depreciation in value from delay or other causes for which the carrier may be liable, the amount to be paid by the carrier in damages shall be only and shall in no event exceed, that percentage of the value declared herein which the depreciation at destination bears to the actual cash value thereat.

Twelfth: No agent of the carrier has authority to make an oral contract for the shipment of freight, and this contract contains all of the provisions of the contract of shipment between the parties hereto. It is also expressly understood that all promises and agreements respecting, or in any wise relating to the subject hereof, are fully expressed herein, and no others were made or exist.

Thirteenth: This contract is executed in triplicate, one copy delivered to the shipper, and two copies retained by the carrier.

Fourteenth: That no persons other than the owner of the

stock shipped or his duly authorized agent, in the name of the owners, shall be allowed to sign this contract.

Witness our signatures on the date above written.

Sign with pen and ink or copying pencil.

A. J. CHESTER,
Authorized agent of the Texas & Pacific Ry. Co.

CLAY ROBINSON, Shipper,
By ROY BERRY,
His duly authorized agent.

C. H. WADLEY, Witness.
To be other than either of the contractors.

(Copy)

Filed Mar. 25, 1918.

Jno. J. Murphy, Clerk.

Caretakers Transportation contract.

In consideration of the transportation of the undersigned in charge of the live stock covered by this contract, the undersigned do assume all risk of personal injury or damage to property, either in going or returning, if receiving return transportation. The undersigned also certify that they have carefully read the Ninth section of this contract, and that they do accept all of the terms thereof, and that if entitled to transportation under applicable tariffs, such transportation shall be obtained and used only in the manner provided for in the [Nith] section of this contract.

And the undersigned agree to present this contract for passage to the agent of such successive connecting carrier for affirmation or substitution before attempting to travel hereon on the lines of such successive carriers.

Sign with pen and ink, or copying pencil.

(1) Roy Berry.
(2) .....
(3) .....

To Freight Conductors:

Pass Parties in charge who have written their names above on train handling the shipment.

A. J. CHESTER,
Agent of the Texas & Pacific Ry. Co.
Ft. Worth B Station
10-10 1917

Notice:—This live stock bill of lading is issued in three parts at one writing by the use of carbon paper, and each copy must be signed in the spaces provided, by the shipper or his agent, caretakers, if any, and the agent of the company, and when so executed each copy is in fact, and will have the force and effect of, an original.

Agent will give one copy to the shipper, send one to General Superintendent and retain the remaining copy for
21 station files. All blank spaces not required to be filled in must be cancelled thus:—

22 Notice: If this pass is found in the hands of any persons other than the original holders who actually accompanied shipment of stock described herein as active caretakers and who are thereby entitled to return passage, it becomes the property of the company, and train auditors or conductors will take it up and collect full fare.

The Texas & Pacific Railway Company
Interstate Live-stock Contract.

Filed Mar. 25th, 1918,
Jno. J. Murphy, Clerk.

23 **"EXHIBIT 'B' TO BILL OF COMPLAINT"**

Gulfport, Miss., November 21, 1917.

The Texas & Pacific Ry. Co.,
Ft. Worth, Texas,

Gulf & Ship Island Railroad Co.,
Gulfport, Miss.

Gentlemen:—

We, the undersigned, as shippers and consignees, hereby present our claim for damage occasioned on account of injury to and injuries accrued and to accrue from delay in shipment of cattle under interstate live stock bill of lading issued by the Texas and Pacific Ry. Company, at Ft. Worth, Texas, B Station 10-10 17 whereby Clay-Robinson Commission Company shipped ten cars of cattle said to contain 294 heads, Howison, Miss., consigned to L. N. Dantzler Lumber Company in the cars as set out in said bill of lading.

These cattle were 110½ hours in transit as a result of which seven cows and four calves of the value of $600.00 have at this time died, and the condition of the cattle has greatly deteriorated on account of this long delay and failure to unload and water and feed. The cattle were only fed twice in transit.

On account of the action of the carriers in delaying this shipment as aforesaid, we have been damaged in the sum of at least $5000.00 to the herd in addition to the lost cattle above mentioned, and will thank you to promptly take steps to settle the matter.

We are presenting this claim in accordance with the terms of the bill of lading and will thank you to advise us promptly if you desire any further information.

24 Yours very truly,

(Signed) CLAY-ROBINSON & CO.,
Shipper,

(Signed) L. N. DANTZLER LUMBER CO.,
Consignee.

Exhibit "B"

Filed Mar. 25, 1918,
Jno. J. Murphy, Clerk.

(Endorsements)
No. 5552

Chancery Court, Harrison County.
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co., et al.
Bill of Complaint.

Filed Mar. 25, 1918,
Jno. J. Murphy, Clerk.
White & Ford, For Complainant.

25 **"SUMMONS TO THE TEXAS & PACIFIC RAILWAY COMPANY, DEFENDANT AND PROOF OF PUBLICATION."**

Chancery Summons.

No. 5552

The State of Mississippi:

To the Texas & Pacific Railway Company, a corporation, Defendant.

You are commanded to appear before the Chancery Court of the County of Harrison, at the Hourt House thereof, in the City of Gulfport, in the State of Mississippi, on the Third Monday of June, A. D. 1918, to defend the suit in said Court of L. N. Dantzler Lumber Company, a corporation, complainant, wherein you are defendant.

This 25th day of March, A. D. 1918.

JNO. J. MURPHY,
(Seal) Clerk.

State of Mississippi, }
Harrison County. } ss.

Before the undersigned Notary Public of said County, E. J. Adam, Publisher of a newspaper printed and published in said County, in the City of Pass Christian, called the Coast Beacon, makes oath that the publication of a certain Notice, a true copy of which is hereto attached, has been made in said paper for three consecutive weeks, to wit:—

Vol. 38, No. 5, Dated March 30, 1918,
Vol. 38, No. 6, Dated April 6, 1918,
Vol. 38, No. 7, Dated April 13, 1918,
Vol. No. Dated 191
Vol. No. Dated 191
Vol. No. Dated 191

26 And I hereby certify that the several numbers of the Newspapers containing the attached, have been before me exhibited and examined, and publication thereof to have been correctly made as stated.

E. J. ADAM, Publisher.

Sworn to and subscribed, this 15th day of June, 1918.

C. B. ADAM,
Notary Public.

(Seal)

(Endorsements)

5552

Dantzler Lbr. Co.

vs.

T. & P. Rwy. Co. et als.

Proof.

Filed Jun. 17, 1918.
Jno. J. Murphy, Clerk.

27 State of Mississippi,
County of Harrison.

In the Chancery Court

No. 5552

To the Sheriff of Hinds County—Greeting:

You are hereby commanded to summon Illinois Central Railroad Company, a corporation, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918. on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in said Court on March 25th, 1918, By L. N. Dantzler Lumber Company, a corporation, complainant, against the Texas & Pacific Railway Company, a corporation, and others, defendants, wherein the said Illinois Central Railroad Company, is defendant thereto. The said Illinois Railroad Company, a corporation, defendant, is hereby required to answer stating what funds of the defendant The Texas & Pacific Railway Company, a corporation, it has in its hands at the time of service of process herein, and what amounts it has had between the time of service of process and the time of answering the bill of complaint herein, and what amounts it has at the time of answering the bill of complaint herein, and whether and in what amounts it will be indebted to the said Texas & Pacific Railway Company in the future; and further to do and suffer such things as shall be considered and ordered by the

Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY,
Clerk Chancery Court, Harrison County, Miss.

(Seal)

By....., D. C.

(Endorsement)

No. 5552

Chancery Court
Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

The Texas & Pacific Railway Co. et als.
Summons

Issued March 25th, 1918.

Returnable Third Monday in June, A. D. 1918.

Returned and filed this 28th day of March, A. D. 1918.
Jno. J. Murphy, Clerk.

By....., D. C.

Executed personally on the Illinois Central Railroad Company by delivering a true copy of the within writ to Homer Hill its cashier at Jackson, Miss. This 27th day of March, 1918.

W. S. WELLS, Sheriff,
By J. D. SMITH, Deputy Sheriff.

28 State of Mississippi,
County of Harrison.

In the Chancery Court

No. 5552

To the Sheriff of Hinds County—Greeting:

You are hereby commanded to summon Yazoo & Mississippi Valley Railroad Company, a corporation, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in said Court on March 25th, 1918, by L. N. Dantzler Lumber Company, a corporation, complainant, against The Texas & Pacific Railway Company, a corporation, and others, defendants, wherein the said Yazoo & Mississippi Valley Railroad Company is defendant thereto. The said Yazoo & Mississippi Valley Railroad Company, a corporation defendant, is hereby required to answer stating what amounts of the defendant The Texas & Pacific Railway Company, a corporation, it has in its hands at the time of service of process herein, and what amounts it has had between the time of service of process and the time of answering the bill of complaint herein, and what amounts it has at the time of answering the bill of complaint herein, and whether and in what amounts it will be indebted to the said Texas & Pacific Railway Company in the future; and further to do and suffer such things as shall be considered and ordered by the

Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

(Seal)

JNO. J. MURPHY,
Clerk Chancery Court, Harrison County, Miss.

By....., D. C.

(Endorsement)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Co. et als.
Summons

Issued March 25th, 1918.

Returnable Third Monday in June, A. D. 1918.

Returned and filed this 28th day of Mch., A. D. 1918.

Jno. J. Murphy, Clerk.

By....., D. C.

Executed personally on the Yazoo and Mississippi Valley Railroad Company by delivering a true copy of the within writ to Homer Hill its Cashier at Jackson, Miss. This 27th day of March, 1918.

W. S. WELLS, Sheriff,
By J. D. SMITH, Deputy Sheriff.

State of Mississippi,
29 County of Harrison.

In the Chancery Court.

No. 5552.

To the Sheriff of Lauderdale County—Greeting:-

You are hereby commanded to summon Mobile & Ohio Railroad Company, a corporation, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in said Court on March 25th, 1918, by L. N. Dantzler Lumber Company, a corporation, complainant, against The Texas & Pacific Railway Company, a corporation, and others, defendants, wherein the said Mobile & Ohio Railroad Company is defendant thereto. The said Mobile & Ohio Railroad Company is hereby required to answer stating [stating] what amounts of the defendant The Texas & Pacific Railway Company, a corporation, it has in its hands at the time of service of process herein, and what amounts it has had between the time of service of process and the time of answering the bill of complaint herein, and what amounts it has at the time of answering the bill of complaint herein, and whether and in what amounts it will be indebted to the said Texas & Pacific Railway Company in the future, and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY,
Clerk Chancery Court, Harrison County, Miss.
By ....., D. C.

(Endorsements.)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Co.

et al.

Summons

Issued March 25th, 1918
Returnable Third Monday in
June, A. D. 1918
Returned and filed this 1
day of April, A. D. 1918
Jno. J. Murphy, Clerk
By ....., D. C.

Sheriff's fee paid by
White & Ford, Atts. for Complt., $2.00

I have this day executed the within writ personally, by delivering to O. L. McKay, agent of the Mobile and Ohio Rail Road Company, Meridian, Miss., a true copy of this writ.

This 27 day of March, 1918.

J. P. Young,
Sheriff.

By A. D. Wagner,
Deputy Sheriff

Received this writ in my office this 26 day of March, 1918.

J. P. Young,
Sheriff.

By .....,D. S.

I have this day executed this writ personally, by delivering to O. L. McKay, agent for the Mobile and Ohio Railroad

Company, a corporation at Meridian, Miss., a true copy thereof.

This 27 day of March, A. D. 1918.

J. P. Young,
Sheriff.

By A. D. Wagner,
D. S.

State of Mississippi,
30 County of Harrison.

In the Chancery Court.

No. 5552.

To the Sheriff of Warren County—Greeting:-

You are hereby commanded to summon Vicksburg, Shreveport & Pacific Railway Company, a corporation, Defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of complaint filed in the Chancery Court of Harrison County, Mississippi, a corporation, complainant, against Texas & Pacific Railway Company, and others, wherein the said Vicksburg, Shreveport & Pacific Railway Company is a defendant thereto; and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY,

(Seal) Clerk Chancery Court, Harrison County, Miss.

By ....., D. C.

(Endorsements.)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Co.

Et als.

Summons
Issued March 25th, 1918
Returnable Third Monday in
June, A. D. 1918
Returned and filed this 1
day of April, A. D. 1918
Jno. J. Murphy, Clerk

By ....., D. C.

Sheriff's fee paid by White & Ford
for Complainant $2.00

Received this writ in my office this 26th day of March, 1918.

F. A. Scott,
Sheriff.

By J. P. Wheeler,
D. S.

I have this day executed this writ personally, upon the within named Vicksburg, Shreveport & Pacific Railway Company, by delivering to Austin King, Agt. of said Co., a true copy of this writ.

This 28th day of March, A. D. 1918.

F. A. Scott,
Sheriff.

By J. P. Wheeler,
D. S.

State of Mississippi,
31 County of Harrison.

In the Chancery Court.

No. 5552.

To the Sheriff of Warren County—Greeting:-

You are hereby commanded to summon Alabama & Vicksburg Railway Company, a corporation, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in the Chancery Court of Harrison County, Mississippi, on the 25th day of March, 1918, by L. N. Dantzler Lumber Company, a corporation, complainant, against The Texas & Pacific Railway Company, and others, wherein the said Alabama & Vicksburg Railway Company is a defendant thereto; and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY,

(Seal) Clerk Chancery Court, Harrison County, Miss.

By ....., D. C.

(Endorsements.)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Company
et als.

Summons
Issued March 25th, 1918
Returnable Third Monday in
June, A. D. 1918
Returned and filed this 1
day of April, A. D. 1918

Jno. J. Murphy, Clerk

By ....., D. C.

Sheriff's fees paid by White & Ford
for Comp. 2.00

Received this writ in my office this 26th day of March, 1918.

F. A. Scott,
Sheriff.
By J. P. Wheeler,
D. S.

I have this day executed this writ personally, upon the within named Alabama & Vicksburg Railway Company by delivering to Austin King, Agent of said Co., a true copy of this writ.

This 28th day of March, A. D. 1918.

F. A. Scott,
Sheriff.
By J. P. Wheeler,
D. S.

32 State of Mississippi,
County of Harrison.

In the Chancery Court.

No. 5552

To the Sheriff of Harrison County—Greeting:—

You are hereby commanded to summon Louisville & Nashville Railroad Company, a corporation, Defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in said Court on March 25th, 1918, by L. N. Dantzler Lumber Company, a corporation, complainant, against the Texas & Pacific Railway Company, a corporation, and others, defendants, wherein the said Louisville & Nashville Railroad Company is defendant thereto. The said Louisville & Nashville Railroad Company, a corporation, defendant, is hereby required to answer stating what funds of the defendant the Texas & Pacific Railway Company, a corporation, it has in its hands at the time of service of process herein, and what amounts it has had between the time of service of process and the time of answering the bill of complaint herein, and what amounts it has at the time of answering the bill of complaint herein, and whether and in what amounts it will be indebted to the said Texas & Pacific Railway Company in the [furture], and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY, Clerk

(Seal) Chancery Court, Harrison County, Miss.

By.....D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Company, et als.

Summons
Issued March 25th, 1918.
Returnable Third Monday in
June, A. D. 1918.

Returned and filed this 27
day of April, A. D. 1918.
Jno. J. Murphy, Clerk.

Received this writ in my office this 26th day of March, 1918.

J. B. Clark, Sheriff,
By F. L. Patenotte, D. S.

I have this day executed this writ personally, upon the within named Louisville & Nashville Railroad Company, by delivering to H. B. Nunn, Agent of the within named Louisville and Nashville Railroad Company, defendant, a true copy thereof.

This 27th day of March, A. D. 1918.

J. B. Clark, Sheriff,
By C. W. Fulmer, D. S.

33 State of Mississippi,
County of Harrison.

In the Chancery Court.

No. 5552

To the Sheriff of Harrison County—Greeting:—

You are hereby commanded to summon Gulf & Ship Island Railroad Company, a corporation, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1918, on the first day of said term, then and there to plead, answer or demur to the Bill of Complaint filed in said Court on March 25th, 1918, by L. N. Dantzler Lumber Company, a corporation, complainant, against the Texas & Pacific Railway Company, a corporation, and others, defendants, wherein the said Gulf & Ship Island Railroad Company is defendant thereto. The said Gulf & Ship Island Railroad Company, a corporation, defendant, is hereby required to answer stating what funds of the defendant the Texas & Pacific Railway Company, a corporation, it has [it] in its hands at the time of service of process herein, and what amounts it has had between the time of service of process and the time of answering the bill of complaint herein, and what amounts it has at the time of answering the bill of complaint herein, and whether and in what amounts it will be indebted to the said Texas & Pacific Railway Company in the future; and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under by hand and official seal, and issued on this the 25th day of March, A. D. 1918.

JNO. J. MURPHY, Clerk

(Seal) Chancery Court, Harrison County, Miss.

By.....D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Company et als.

Summons
Issued March 25th, 1918.
Returnable Third Monday in
June, A. D. 1918.

Returned and filed this 27
day of April, A. D. 1918.
Jno. J. Murphy, Clerk.
Exe 1.50
E & R .50

$2.00

Received this writ in my office this 26th day of March, 1918.

J. B. CLARK, Sheriff,

By F. L. PATENOTTE, D. S.

I have this day executed this writ personally, upon the within named Gulf & Ship Island Railroad Company by delivering to B. E. Eaton, attorney for the within named Gulf & Ship Island Railroad Company, a true copy thereof.

This 27th day of March, A. D. 1918.

J. B. CLARK, Sheriff,

By C. W. FULMER, D. S.

34 **"PLEA IN ABATEMENT BY ILLINOIS CENTRAL R. R. CO."**

In the Chancery Court of Harrison County, Mississippi.
L. N. Dantzler Lumber Company, Complainant,

vs.

The Texas & Pacific Railway Company, et al., Defendant.

Plea in Abatement by Illinois Central Railroad Company.

Comes the Illinois Central Railroad Company, one of the defendants herein, summoned as garnishee herein, and for plea in abatement to the bill of complaint exhibited againt it here it says:

That the proclamation of December 26th, 1917, effective 12:00 O'clock Noon, December 28th, 1917, of the Hon. Woodrow Wilson, President of the United States, issued in pursuance of the authority conferred by the Congress of the United States by joint resolutions thereof, of April 6th, 1917, and December 7th, 1917, and in pursuance of Section 1 of the Act of Congress approved August 29th, 1916, entitled "An act Making appropriations for the support of the Army for the Fiscal Year Ending June 30th, 1917, and for other purposes", took possession and assumed control, by the United States Government, of each and every system of transportation, including this defendant, and the appurtenances thereof located wholly or in part within the boundaries of the continental United States, and consisting of railroads, and owned or controlled systems of coastwise and inland transportation, engaged in general transportation whether operated by steam or by electric power, icluding
35 terminals, terminal companies and terminal associations, sleeping and parlor cars and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation, to the end that such rail and water systems of transportation be utilized for the transportation of troops, war material, and equipment in the prosecution of the war declared by said Congressional Reso-

lutions of April 8th, 1917, and December 7th, 1917, respectively.

Said defendant further avers that in pursuance of said congressional action, and by said proclamation, the Hon. Wm. G. McAdoo, was duly and legally appointed Director General of Railroads so taken over by the Government as aforesaid, and the said Wm. G. McAdoo, pursuant to said proclamation, entered upon and has continued to discharge the duties of Director General of Railroads as provided therein.

Defendant further avers that for the purpose of carrying out the plan whereby the railroads taken over pursuant to said proclamation of the President may be in orderly manner operated by the Government, the Congress of the United States, by its Act approved March 21st, 1918, enacted a statute entitled "An Act to Provide For the Operation of Transportation Systems While Under Federal Control for the Just Compansation of their Owners, and For Other Purposes", by Section 8 of this Act, it is provided among other things, "That the President may execute any of the powers herein and heretofore granted him with relation to the Federal Control of all systems of transportation and parts thereof, including railroads * * * through such agencies as he may determine".

Further by Section 9 of said act, it is provided: "That
36 the provisions of the Act entitled "An Act making appropriations for the support of the army for the fiscal year ending June 30th, 1917, and for other purposes" approved August 29th, 1916, shall remain in force and effect, except as expressly modified and restricted by this Act; and the President, in addition to powers conferred by this Act, shall have, and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred".

Further, by Section 10 of this Act, it is provided among other things, No process, mesne or final, shall be levied against any property under such Federal control".

Further, by Section 12 of the said Act of Congress of March 21st, 1918, it is provided: "That monies and other property derived from the operation of the carriers during

Federal control, are hereby declared to be the property of the United States."

That in pursuance of said Section 8 of said Act of Congress of March 21st, 1918, the President issued a proclamation dated March 29th, 1918, reading in part as follows:

"Whereas, by the proclamation dated December 26th, 1917, taking over each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the United States, it is provided:

"That the possession, control, operation and utilization of such transportation systems singularly by me undertaken, shall be exercised by and through Wm. G. McAdoo, who is hereby appointed and designated Director General, and the said Wm. G. McAdoo, pursuant to said proclamation entered upon and has continued to discharge the duties of Director General of Railroads as provided therein, and

Whereas, since the issuance of said proclamation, the Congress of the United States has passed an Act entitled

37 'An Act to provide for the operation of transportation systems while under Federal Control, for the just com-

systems while under Federal Control, for the just compensation of their owners, and for other purposes', which act was duly approved by me on March 21st, 1918, and is now in full force and effect, and in terms conferred upon the President the powers specified therein, and the authority to carry the same into effect, and,

"Whereas, it is provided in Section 8 of said Act that the President may execute any of the powers therein and theretofore granted him with relation to the Federal control of systems of Transportation and parts thereof, including railroads, inland waterways, etc., through such agencies as he may determine.

"Now therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers and authority so vested in me by said act and all powers me hereto enabling, do hereby authorize the said Wm. G. McAdoo, Director General of Railroads as aforesaid, either personally or through such agencies, divisions, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons or in the name of the President

• • • • to issue any and all others which may in any way be found necessary and expedient in connection with the Federal Control of systems of transportation and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular all acts and things and to exercise all and singular the powers and duties, which in and by said Act, or any other act, in relation to the subject hereof, the President is authorized to dc and perform."

Defendant further avers that by said proclamation of December 26th, 1917, it is provided among other things as follows:

"Except with the prior assent of the Director General of Railroads, no attachment by mesne process or on execu-
38 tion shall be levied upon or against any of the property used by any of said transportation systems in the conduct of their business as common carriers."

Defendant further avers, by Section 11, of said Act, of Congress, March 21st, 1918, it is provided, among other things, as follows:

"Every corporation or person, whether carrier or shipper or any receiver, trustee, lessee, agent of person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this Act, or shall knowingly interfere with or impede the possession use, operation, or control of any railroad property, railroad or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this act, shall be guilty of a misdemeanor, and shall upon conviction, be punished by a fine of not more than $5000.00, or, if a person, by imprisonment for not more than two years, or both, Each independent transaction constituting a violation of, or failure to observe any of the provisions of this act, or any order entered in pursuance hereof, shall constitute a separate offense."

Defendant further avers that by virtue of the executive orders and the Acts of Congress aforesaid, it is now an employee of the United States of America, and that the funds and property if any sought to be [garnished] at the instance

of the complainant herein, belong to the United States of America, and not to the defendant, The Illinois Central Railroad Company, and that such funds and property are not subject to garnishment nor attachment, as by this proceeding is sought to be accomplished; that said complainant is attempting by said bill of complaint to so impound
39 monies and property of a transportation system under the exclusive jurisdiction and control of the United States Government, under an attachment proceeding, without the prior assent of the Director General of Railroads, contrary to the executive orders and Acts of Congress aforesaid.

All of which matters and things said defendants [is] ready to verify.

ILLINOIS CENTRAL FAILROAD COMPANY.
By BEN H. WELLS, Attorneys.

(Endorsements)

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific et al.

Answer of the I. C. R. R. Co. by Plea in Abatement.

In the Chancery Court of Harrison County Mississippi.
Filed June 10th, 1918.

Jno. J. Murphy, Clerk.

Wells, May & Sanders,
Attorneys at Law,
Jackson, Mississippi.

40 **"ANSWER OF ILLINOIS CENTRAL RAILROAD COMPANY, GARNISHEE"**

In the Chancery Court of Harrison County, Mississippi.

No. ....

L. N. Dantzler Lumber Company, Complainant,

vs.

The Texas & Pacific Railway Company, et al., Defendants.

The Answer of the Illinois Central Railroad Company.

Comes the Illinois Central Railroad Company, by attorneys, and for answer as garnishee to the original bill of complaint filed herein, and shows and states to the Court as follows, to-wit:-

That it is untrue, as alleged in the original bill of complaint, that the defendant, The Illinois Central Railroad Company, is indebted to the Texas & Pacific Railway Company, or has any funds of the said Texas & Pacific Railway Company in its hands and upon the contrary, it shows and states to the court that the said Texas & Pacific Railway Company is indebted to this defendant in the sum of $4000.23, and it shows and states to the Court that it was not indebted to the said Texas & Pacific Railway company at the time of the service of this writ of garnishment upon it herein, nor has it been so indebted up to this time.

Defendant states that it has no funds of the said defendant, Texas & Pacific Railway Company in its hands, and had none at the time of the service of the process in this cause.

And now having fully answered said original bill, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

ILLINOIS CENTRAL RAILROAD COMPANY,

41 By WELLS, MAY & SANDERS,

Attorneys.

State of Mississippi,
Hinds County.

Personally appeared before the undersigned Notary Public in and for the City of Jackson, said County and State, Ben H. Wells, one of the attorneys for the Illinois Central Railroad Company, who states upon information and belief, that the matters and things contained herein are true as herein stated.

BEN H. WELLS.

Sworn to and subscribed before me, this the 11th day of June, 1918.

(Seal) F. M. WEST, N. P.

(Endorsements)

5552

Chancery Court, Harrison County.
Dantzler Lbr. Co.

vs.

Texas & Pacific R. R. Co., et als.
Answer of Illinois Central R. R. Co.

Filed June 13th, 1918.
Jno. J. Murphy, Clerk.

42 **"REPLY TO PLEA OF DEFENDANT, I. C. R. R. CO."**

In Chancery Court.

State of Mississippi,
County of Harrison.

L. N. Dantzler Lumber Company

vs.

Texas & Pacific Railroad Company, et al.

Comes the complainant and for reply to the plea filed by Illinois Central Railroad Company in this cause on June 10th, 1918, says that the matters stated therein are untrue,

and says that it is not true that the funds in the hands of the Illinois Central Railroad are not subject to garnishment or attachment in this proceeding, and that complainant is acting contrary to the executive orders and acts of Congress on the subject.

And this Complainant is ready to verify.

WHITE & FORD,
Attorneys for Complainant.

(Endorsements)

5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co. et al.

Reply to Plea of I. C. R. R.

Filed Oct. 10th, 1919.
Jno. J. Murphy, Clk.

43 **"ANSWER OF ALABAMA & VICKSBURG RAILWAY CO."**

No. 5552.

In the Chancery Court of Harrison County, Mississippi.

To the June Term, 1918.

L. N. Dantzler Lumber Company, Complainant.

v.

Texas & Pacific Railway Company, et al., Defendants.

Answer of the Alabama & Vicksburg Railway Company.

This respondent, the Alabama & Vicksburg Railway Company, saving and reserving to itself all and all manner of benefit and advantage that might or could be taken by way of exceptions or otherwise to the divers errors, inaccuracies and insufficiencies in the bill of complaint contained, doth answer the same or so much and such parts thereof as this

respondent is advised it is necessary or proper to answer, and answering it says:

Respondent admits that the complainant is a corporation and all the defendants are corporations, as charged in the bill of complaint.

Respondent further admits, upon information and belief that the defendant, The Texas & Pacific Railway Company, contracted to transport for complainant from Fort Worth, Texas, to Howison, Mississippi, the ten carloads of cattle mentioned in the bill of complaint and issued its bill of lading to Clay Robinson & Company at Fort Worth, Texas, evidencing its contract to transport the cattle as charged in the bill of complaint and as evidenced by the bill of lading made Exhibit "A" to the bill.

44 It is true that the Texas & Pacific Railway Company itself only transported said shipment of cattle over its own line from Fort Worth, Texas, to Shreveport, Louisiana, and that the shipment was routed over this respondent's line and over the line of the Vicksburg, Shreveport & Pacific Railway Company and that of the Gulf & Ship Island Railroad Company, and it is probably true that the freight charges for the shipment were distributed among the several carriers, including two other carriers not named in the bill of complaint.

It is untrue, however, that each of the carriers, over whose line of railway the shipment was made, was under duty to so transport the cattle that they should be delivered at their destination in the shortest possible time. On the contrary, the carriers were under duty only to transport the shipments within a reasonable time; and it is untrue that the facts charged in the bill of complaint on this subject were well known to all of the defendant railway companies transporting the cattle at the time of the execution of the bill of lading referred to in the bill of complaint or at the time they were being transported by the several defendants.

It is untrue that this defendant negligently conducted itself or failed in any way to perform its duty in the movement of the cars of cattle of, to use the language of the bill, in handling the cars, either as to management or transportation, and it is untrue that any failure of duty on the part of this respondent resulted in the death of any of said cattle

or in the injury to any or all of them, as charged in the bill.

This respondent is without information, knowledge or belief touching the matter of fact charged in the bill to the effect that 110½ hours were consumed in the transportation of said cattle from Fort Worth, Texas, to their point
45 of destination and, therefore, can neither admit nor deny the charge of the bill to that effect. If the interests of this defendant are to be affected by said charge, respondent prays that the complainant shall be required to establish the same by due and legal proof. Respondent is advised, however, that 110½ hours was not an unreasonable or inexcusable length of time within which to transport the said shipment of cattle from Fort Worth, Texas, to Howison, Mississippi.

Respondent denies the charge of the bill, and the same is untrue that the said cattle were not unloaded and watered and fed as they should have been, and it has no information, knowledge or belief as to whether the cattle were fed only twice during the period of their transportation. The facts in regard to the transportation of said shipment of cattle and the feeding and watering and resting the cattle by this respondent are these:

The said cattle were received by this respondent, the Alabama & Vicksburg Railway Company, at Vicksburg, Mississippi, from the Louisiana & Mississippi Railroad Transfer Company, a corporation engaged in the transportation of railroad cars loaded and unloaded across the Mississippi River, on the 13th of October between the hours of eight and ten P. M. of that day. They were not all received at once; it required more than one trip across the river by the boat of the transfer company to carry all of said ten cars of cattle across the stream. This respondent's line of railway does not extend beyond the City of Vicksburg, nor do its tracks cross the Mississippi River. Upon the receipt of the said cattle by this respondent at Vicksburg it promptly, and as soon as the same could be done, unloaded the cattle from the cars in which they had been transported to Vicksburg and respondent fed the said cattle forty bales of hay, watered and rested them the necessary length of time
46 to enable them to recuperate from the weariness of their journey. They were reloaded into the freight

cars on October 14, 1917, between the hours of two and four p. m. and they were forwarded from Vicksburg on the first freight train of this respondent leaving that city for the east. They were so forwarded on train No. 44, they left Vicksburg at 5:25 in the afternoon of said day and were transported over defendant's line of railway, the tracks of which railway were in good condition and were delivered and reached Jackson at 7:25 P. M. on the same day, being just two hours in transit from Vicksburg to Jackson, the distance being forty-five miles.

Respondent shows that its railway tracks have no direct connection at Jackson or elsewhere with the tracks of the Gulf & Ship Island Railroad Company, one of the defendants in this suit, but the connection between the tracks of respondent and the Gulf & Ship Island Railroad has to be made, and in the usual course of business is made and has been so made for years over the tracks of the Illinois Central Railroad Company. After the arrival of the shipment of cattle involved in this suit at Jackson at 7:25 P. M. October 14, 1917, the said cattle and the cars containing them were delivered by this respondent to the Illinois Central Railroad Company at 8 P. M., only thirty-five minutes after the shipment had reached Jackson, and as soon as the same could be done. In truth, this defendant exercised due diligence in the transportation of said cattle and they suffered no damage, loss or injury while in the possession of this defendant. The cars containing the cattle were transported over a perfectly good track and there was no rough usage or handling of the train of cars in which the cattle were transported, and upon the cattle arriving at Jackson they were expeditiously, promptly and within as short a time as it could be done, delivered by this defendant to
47 its connecting carrier, the Illinois Central Railroad Company, and this was done only thirty-five minutes after the freight train containing the cattle reached Jackson.

Respondent further shows that it is informed and believes and therefore, charges, that the cattle mentioned in the bill of complaint at the time they were delivered for shipment at Fort Worth, Texas, to the Texas & Pacific Railway Company were in poor condition; their condition was such that it cannot be hoped that they could be transported from Fort

Worth, Texas, to Howison, Mississippi, without considerable deterioration in their weight and value, even when the best of care and attention were given them. However this may be, this respondent was under duty to receive them at Vicksburg, Mississippi, from the Louisiana & Mississippi Railroad Transfer Company, no matter what their condition may have been, and to transport them over its own line to Jackson, Mississippi, and this it did with diligence and expedition. It transported them over a good railroad track without any mishap or rough handling of the cars on which the cattle were loaded and it promptly delivered them as aforesaid to the Illinois Central Railroad Company for further carriage and to be delivered by said last named railroad company to the Gulf & Ship Island Railroad Company for further transportation to their destination.

The cattle were not injured in any way while in the possession or being carried by this respondent, nor were they injured in any way after their reception by respondent and before their transportation began from Vicksburg, nor were they injured or damaged after they reached Jackson and before they were delivered by this respondent to the Illinois Central Railroad Company.

48 It is untrue that the cattle constituting the shipment mentioned in the bill of complaint greatly deteriorated in value, due to long delay in transit while in the custody and possession of this respondent, nor did they deteriorate in value because of any handling of the cattle while in the possession of this defendant, nor did they [loose] any flesh while in the possession and under the control of this defendant to any extent. They did not deteriorate while in the possession of this defendant either in weight or in vitality.

This respondent is without knowledge, information or belief touching the charge of the bill to the effect that the complainant rendered the Texas & Pacific Railway Company a claim predicated of the loss and damage charged to have been suffered by the complainant on account of said shipment, and if its interest is in any way to be affected by the charge, it prays that the complainant be required to establish its averments on that subject by strict legal proof.

It is untrue that any part of the delay or damage charged in the bill of complaint occurred while the cattle mentioned in the bill of complaint were upon the line of railway of this defendant or in its possession; as before said, this defendant transported the cattle from Vicksburg, Mississippi, to Jackson, Mississippi, expeditiously and promptly. There was no rough handling of the cars containing the cattle or of the cattle themselves and there was no delay in the transportation of them over defendant's railway line.

Respondent further answering, says that by the terms of the bill of lading made an exhibit to the bill of complaint in this cause, the bill of lading evidencing a contract for an interstate shipment of the cattle and the shipment mentioned in the bill of complaint having been an interstate one, that it is expressly provided that the condition of the con-
49 tract evidenced by the bill of lading shall inure to the benefit of all carriers transporting the live stock thereunder, unless otherwise stipulated, and by the terms of the bill of lading it was provided that the value per head of each bull was $75.00 and no more, of each cow $50.00 and no more, of each calf $35.00 and no more. And this respondent prays the benefit of all the terms of said bill of lading as fully as the same could be insisted upon by the initial carrier in this case, the Texas & Pacific Railway Company, or any other carrier in the event it should appear on the trial of this case that this respondent is in any way liable, an event which respondent cannot anticipate because of any matter or thing charged in the bill of complaint.

Now, having fully answered, this respondent prays to be hence dismissed with its reasonable cost in this behalf expended.

And as in duty bound respondent will [every] pray.

ALABAMA & VICKSBURG RAILWAY COMPANY,
By R. H. & J. H. THOMPSON,
Its Solicitors.

State of Louisiana,
Parish of Orleans,
City of Orleans.

Personally came and appeared before the undersigned, a Notary Public in and for said city, parish and State, Udolpho Wolfe, who, being duly sworn, says on oath that he is the agent and an officer of the Alabama & Vicksburg Railway Company, the respondent making the above and foregoing answer; that he is-towit: its Secretary, and that the matters of fact stated in the above and foregoing answer are true and correct as therein stated.

UDOLPHO WOLFE, Secretary.

Sworn to and subscribed before me this the 16th day of May [1928].

50 In witness whereof I have hereunto subscribed my name and affixed my official seal on the day and date herein last written.

WATTS LEVERICH,
(Seal) Notary Public.

(Endorsements)

5552

Harrison County, Chancery Court, June Term, 1918.
L. N. Dantzler Lumber Company

vs.

Texas & Pacific Ry. Co., et al.

Answer of the Alabama & Vicksburg Railway Company.
Filed June 12th, 1918,

Jno. J. Murphy, Clerk.
R. H. & J. H. Thompson, Lawyers,
Jackson, Mississippi.

51 **"ANSWER OF VICKSBURG, [SHREVEPORT] & PACIFIC RAILWAY CO."**

No. 5552

In the Chancery Court of Harrison County, Mississippi.

To the June Term, 1918.

L. N. Dantzler Lumber Company, Complainant,

v.

Texas & Pacific Railway Company, et al., Defendants.

Answer of the Vicksburg, Shreveport & Pacific Railway Company.

This respondent, the Vicksburg, Shreveport & Pacific Railway Company, saving and reserving to itself all and all manner of benefit and advantage that might or could be taken by way of exception or otherwise to the divers errors, inaccuracies and insufficiencies in the bill of complaint contained doth answer the same or so much and such parts thereof as this respondent is advised it is necessary or proper to answer, and answering it says:

Respondent admits that the complainant is a corporation and all the defendants are corporations, as charged in the bill of complaint.

Respondent further admits, upon information and belief that the defendant, the Texas & Pacific Railway Company, contracted to transport for complainant from Fort Worth, Texas, to Howison, Mississippi, the ten car loads of cattle mentioned in the bill of complaint and issued its bill of lading to Clay Robinson & Company at Fort Worth, Texas, evidencing its contract to transport the cattle as charged in the bill of complaint and as evidenced by the bill of lading made Exhibit "A" to the bill.

It is true that the Texas & Pacific Railway Company itself [illegible] transported said shipment of cattle over its own

52 line from Fort Worth, Texas to Shreveport, Louisiana, and that the shipment was routed over this respondent's railway line and over the line of the Alabama & Vicksburg Railway Company and that of the Gulf & Ship Island Railroad Company, and it is probably true that the freight

charges for the shipment were distributed among the several carriers, including two other carriers not named in the bill of complaint.

It is untrue, however, that each of the carriers, over whose line of railway the shipment was made was under duty to so transport the cattle that they should be delivered at their destination in the shortest possible time. On the contrary, the carriers were under [duly] only to transport the shipment within a reasonable time; and it is untrue that the facts charged in the bill of complaint on this subject were well known to all of the defendant railway companies transporting the cattle at the time of the execution of the bill of lading referred to in the bill of complaint or at the time they were being transported by the several defendants.

It is untrue that this defendant negligently conducted itself or failed in any way to perform its duty in the movement of the cars of cattle or, to use the language of the bill, in handling the cars, either as to management or transportation, and it is untrue that any failure of duty on the part of this respondent resulted in the death of any of said cattle or in the injury to any or all of them, as charged in the bill.

This respondent is without information, knowledge or belief touching the matter of fact charged in the bill to the effect that 110½ hours were consumed in the transportation of said cattle from Fort Worth, Texas, to their point of destination, and therefore, can neither admit nor deny
53 the charge of the bill to that effect. If the interests of this defendant are to be affected by said charge, respondent prays that the complainant shall be required to establish the same by due and legal proof. Respondent is advised, however, that 110½ hours was not an unreasonable or inexcusable length of time within which to transport the said shipment of cattle from Fort Worth, Texas, to Howison, Mississippi.

Respondent denies the charge of the bill, and the same is untrue that the said cattle were not unloaded and watered and fed as they should have been, and it has no information, knowledge or belief as to whether the cattle were fed only twice during the period of their transportation. The facts

in regard to the transportation of said shipment of cattle by this respondent are these:

The cattle were received by this respondent from the Texas & Pacific Railway Company at Shreveport, Louisiana, October 13, 1917, at 1:15 on the morning of that day. They were forwarded by this respondent in an extra freight train, leaving Shreveport, Louisiana, October 13, 1917, at 2 o'clock in the morning of that day, only forty-five minutes after they had been received by this respondent as aforesaid, although said extra train had to be provided by this respondent after the receipt of said cattle. The extra train carried said cattle from Shreveport, Louisiana, to Delta Point, Louisiana, a plice located on the western bank of the Mississippi River, nearly opposite the City of Vicksburg, Mississippi, with great expedition, the distance being 171.7 miles, and they were so transported in an extra freight train from Shreveport to Delta Point, reaching the latter place nine hours and fifty minutes after departure from Shreveport and upon their arrival at Shreveport the cattle were promptly, and as soon as it could be done, delivered by this respondent to the Louisiana & Mississippi Railroad Transfer Company, a corporation then and now engaged in the
54 business of transporting railroad cars loaded and unloaded across the Mississippi River. The lines of the respondent railway company do not extend further east than Delta Point, Louisiana, and do not cross the Mississippi River.

Respondent further shows that it is informed and believes and, therefore, charges, that the cattle mentioned in the bill of complaint at the time they were delivered for shipment at Fort Worth, Texas, to the Texas & Pacific Railway Company were in poor condition; their condition was such that it could not have been hoped that they could be transported from Fort Worth, Texas, to Howison, Mississippi, without considerable deterioration in their weight and value, even when the best of care and attention were given them. However this may be, this respondent was under duty to receive them at Shreveport, Louisiana, from the Texas & Pacific Railway Company, no matter what their condition may have been and to transport them over its own line to

Delta Point, Louisiana, and this it did with more than usual diligence and expedition.

It transported them over a good railroad track without any mishap or rough handling of the cars on which the cattle were loaded, and it promptly delivered them as aforesaid, as it was bound to do, to the Louisiana & Mississippi Railroad Transfer Company for further carriage across the Mississippi River and to be delivered by the said Transfer Company, after crossing the river, to another railway company for further transportation in the direction of their destination. The cattle were not injured in any way while in the possession or being carried by this respondent, nor were they injured in any way after their reception by respondent and before their transportation began from Shreveport, nor were they injured or damaged in any way after they reached Delta Point and before they were delivered by this respondent to the transfer company above mentioned.

55 It is untrue that the cattle constituting the shipment mentioned in the bill of complaint greatly deteriorated in value, due to long delay in transit while in the custody and possession of this respondent, nor did they deteriorate in value because of any handling of the cattle while in the possession of this defendant, nor did they lose flesh while in the possession and under the control of this defendant to any extent. They did not deteriorate while in the possession of this defendant either in weight or in vitality.

This respondent is without knowledge, information or belief touching the charge of the bill to the effect that the complainant rendered the Texas & Pacific Railway Company a claim predicated [of] the loss and damage charged to have been suffered by the complainant on account of said shipment, and if its interest is in any way to be affected by the charge, it prays that the complainant be required to establish the averments of the bill on that subject by strict legal proof.

It is untrue that any part of the delay or damage charged in the bill of complaint occurred while the cattle mentioned in the bill of complaint were upon the line of railway of this defendant or in its possession; as before said, this defendant

transported the cattle from Shreveport, Louisiana, to Delta Point, Louisiana, expeditiously and promptly. There was no rough handling of the cars containing the cattle or of the cattle themselves and there was no delay in the transportation of them over defendant's railway line.

Respondent further answering, says that by the terms of the bill of lading made an exhibit to the bill of complaint in this cause, the bill of lading evidencing a contract for
56 an interstate shipment of the cattle and the shipment mentioned in the bill of complaint having been an interstate one, that it is expressly provided that the conditions of the contract evidenced by the bill of lading shall inure to the benefit of all carriers transporting the live stock thereunder, unless otherwise stipulated and by the terms of the bill of lading it was provided that the value per head of each bull was $75.00 and no more, of each cow $50.00 and no more, of each calf $35.00 and no more. And this respondent prays the benefit of all the terms of said bill of lading as fully as the same could be insisted upon by the initial carrier in this case, the Texas & Pacific Railway Company, or any other carrier in the event it should appear on the trial of this case that this respondent is in any way liable, an event which respondent cannot anticipate because of any matter or thing charged in the Bill of complaint.

Now, having fully answered, this respondent prays to be hence dismissed with its reasonable cost in this behalf expended.

And as in duty bound respondent will ever pray.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY.

By R. H. & J. H. THOMPSON,
Its Solicitors.

State of Louisiana,
Parish of Orleans,
City of New Orleans.

Personally came and appeared before the undersigned a Notary Public in and for said city, parish and State, Kazret Jouel, who, being duly sworn, says on oath that he is the agent and an officer of the Vicksburg, Shreveport & Pacific Railway Company, the respondent making the above and foregoing answer; that he is to-wit: Its President and that the matters of fact stated in the above and foregoing
57 answer are true and correct as therein stated.

KAZRET JOUEL.

Sworn to and subscribed before me this the 15th day of May, 1918. In witness whereof I have hereunto subscribed my name and affixed my official seal on the day and date herein last written.

WATTS K. LEVERICH,
(Seal) Notary Public.

(Endorsements)

5552

Harrison, Chancery Court, June Term, 1918.

L. N. Dantzler Lumber Company

vs.

Texas & Pacific Ry. Company, et al.

Answer of Vicksburg, Shreveport & Pacific Railway Company.

Filed June 12th, 1918,
Jno. J. Murphy, Clerk.
R. H. & J. H. Thompson, Lawyers,
Jackson, Mississippi.

58 **"ANSWER OF LOUISVILLE & NASHVILLE RAILROAD COMPANY"**

State of Mississippi,
County of Harrison.

In the Chancery Court of Harrison County.

No. 5552.

L. N. Dantzler Lumber Company, a corporation, Complainant,

vs.

Texas & Pacific Railroad Company, et [als.], Defendants.

To the Honorable, the Chancery Court of Harrison County, Mississippi:

Comes the Louisville & Nashville Railroad Company, one of the defendants in the above entitled cause by its attorneys Gregory L. & H. H. Smith, Joel W. Goldsby and Horace Bloomfield, and says:

1st: Admits that it is a corporation organized under the laws of the State of Kentucky, and doing business in several of the States of the United States, including the State of Mississippi, and that it does maintain an office in Harrison County, Mississippi, and has agents in said Harrison County, upon whom service of process might be had.

2nd: That on March 28th, 1918, the defendant, the Texas & Pacific Railroad Company owed this defendant one thousand and twenty and forty-one one hundredths ($1,020.41) Dollars on account of business moving prior to December 29th, 1917, and on account of business moving from December 29, 1917, to March 28th, 1918, the further sum of three thousand one hundred and two and seven one hundredths ($3,102.07) Dollars.

It further says that since the said 28th day of March, 1918, the said indebtedness of the defendant the Texas & Pacific Railroad Company has increased to the said
59 defendant the Louisville & Nashville Railroad Company herein, to the sum of fourteen thousand and six hundred and ninety eight and fifty six one hundredths ($14,-

698.56) Dollars, as it set out in the answer of said defendant, the Louisville & Nashville Railroad Company, as garnishee in this cause.

3rd: That defendant has no knowledge or information as to the matters and things set out in the bill of complaint in said cause, beginning with the paragraph in said complaint which is as follows;—to-wit: "That on the 10th day of October, 1917, the defendant, the Texas & Pacific Railroad Company agreed with complainant", and ending with the words "The Texas & Pacific Railroad Company and that some unnecessary and unreasonable delay in handling occurred on the line of the other defendants who were carriers of said shipment", including the parts quoted herein and all of the matters and things alleged in said complaint contained between said quotations.

4th: That this defendant has no knowledge or information as to whether any other person or persons are indebted to said defendant, The Texas & Pacific Railroad Company or as to whether any other person or persons had any other effects of said defendant in his or their possession or control.

5th. That this said defendant has no knowledge or information as to the matters and things set out in the exhibit attached to complaint in this cause.

This defendant says that it has fully complied with the prayer in said complaint for a discovery of indebtedness owed to it by said Texas & Pacific Railroad Company, by filing its answer as garnishee, in said cause as is hereinabove set out.

Having fully answered the bill of complaint in the above entitled cause, insofar as it is able to answer the same,
60 this defendant prays to be dismissed with its reasonable costs in the premises incurred.

GREGORY L. & H. H. SMITH,
JOEL W. GOLDSBY,
HORACE BLOOMFIELD,
Attorneys for the defendant the Louisville & Nashville Railroad Co.

State of Alabama,
County of Mobile.

Personally appeared before me, D. B. Holman, a notary public in and for said State and County, W. M. Boykin, Ass't Superintendent of the New Orleans and Mobile Division of the Louisville & Nashville Railroad Company, who being sworn deposes and says that he is duly authorized to make the above affidavit on behalf of the Louisville & Nashville Railroad Company; that he has no personal knowledge as to the matters and things set out in said answer, insofar as the indebtedness of this defendant to the defendant The Texas & Pacific Railroad Company is concerned, but that the information upon which said answer in this respect is made is obtained from the sworn answer of this defendant as garnishee in this cause, and upon said information so made, which he believes to be true, and the matters and things which he knows of his own knowledge, says that the statements contained in the foregoing answer are true.

W. M. BOYKIN,
Asst. Supt. L. & N. Railroad Co.

Subscribed and sworn to before me this the 13th day of June, 1918.

D. C. HOLOMAN,
(Seal) Notary Public in and for the County of Mobile, State of Alabama.

61 (Endorsements)

5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific R. R. Co., et [als.]

Answer of Louisville & Nashville R. R. Co., Deft.
Filed June 14th, 1918.

Jno. J. Murphy, Clerk.
Gregory L. & H. H. Smith,
Joel W. Goldsby,
Horace Bloomfield,
Attys. for L. & N. R. R. Co., Deft.

62 **"ANSWER OF LOUISVILLE & NASHVILLE RAILROAD COMPANY, GARNISHEE."**

State of Mississippi,
County of Harrison.

In the Chancery Court.

No. 5552

L. N. Dantzler Lumber Company, Plaintiff,

vs.

Texas & Pacific Railway Company, Defendant, and Louisville & Nashville Railroad Company, Garnishee.

Answer of Garnishee, Louisville & Nashville Railroad Company.

Now comes the garnishee, Louisville & Nashville Railroad Company, a corporation of the State of Kentucky, in the above styled cause, and states that at the time of the service of the garnishment herein upon its agent at Gulfport, in the State of Mississippi to-wit:—on March 28, 1918, returnable on the third Monday of June, 1918, it was not indebted to the defendant, Texas & Pacific Railway Company, in any amount, and has not been since that date, nor is it at this time indebted to said defendant, Texas & Pacific Railway Company, in any amount whatever.

It further states that on March 28, 1918, the date of the service of said writ of garnishment herein, the defendant, Texas & Pacific Railway Company, owed this garnishee $1,020.41 on account of business moving prior to December 29, 1917, and on account of business moving from December 29, 1917, to March 28, 1918, the further sum of $3,102.07.

It further states that since the service of said writ of garnishment herein the indebtedness of the defendant, Texas &
Pacific Railway Company, on account of business mov-
63 ing since Decmeber 28, 1917, has increased to the
[Louiville] & Nashville Railroad Company, garnishee herein, to the sum of $14,698.56.

It therefore, prays hence to be dismissed with its costs herein, and for all other relief to which it may appear to be entitled.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By JOEL W. GOLDSBY,
HORACE BLOOMFIELD,
Its Attorneys.

State of Kentucky, } Sct.
Jefferson County. }

The affiant, A. J. Pharr, states he is comptroller of the Louisville & Nashville Railroad Company, the garnishee herein, and the statements contained in the foregoing answer, as to such garnishee, are true and correct, according to the records on file and in his office, of which he is custodian.

A. J. PHARR.

[Scubscribed] and sworn to before me by said Pharr, this June 11, 1918, as witness my hand and seal as Notary Public of Jefferson County, Kentucky. My commission expires January 30, 1922.

G. W. B. OLMSTEAD,
(Seal) Notary Public Jefferson County, Kentucky.

(Endorsements)
5552
State of Mississippi,
County of Harrison.
In the Chancery Court.
No. 5552.
L. N. Dantzler Lumber Co., Plff.,
64 vs.
T. & P. Ry. Co., Deft.,
and
L. & N. R. R. Co., Garnishee.
Answer of Garnishee, Louisville & Nashville Railroad Company.
Filed June 14th, 1918.
Jno. J. Murphy, Clerk.
Joel W. Goldsby &
Horace Bloomfield,
Attys. L. & N. R. R. Co., Garnishee.

65 **"ANSWER OF GULF & SHIP ISLAND RAILROAD COMPANY."**

In the Chancery Court of Harrison County,

June Term, 1918.

L. N. Dantzler Lumber Company, Complainant,

vs.

Texas & Pacific Railroad Co., et al., Defendants.

The Gulf and Ship Island Railroad Company, answering for itself the Bill of Complaint filed against it in the above styled cause says:—

Defendant admits that the Complainant is a corporation organized under the laws of the State of Mississippi. It is without information as to the status of any of defendants except itself as to which it admits that it is a corporation organized under the laws of the State of Mississippi with its principal offices in Harrison County.

The defendant is without authentic information that the Complainant on the 10th day of October, 1917, delivered to the Texas & Pacific Railroad Company the shipment of live stock as stipulated in the Bill of Complaint but is advised that the facts therein stated as to the date of shipment and as to Complainant being the consignee are true as stated.

The defendant admits that it received a shipment from the Alabama and Vicksburg Railroad Company, a co-defendant, and that it received a part of the revenue from the haul thereof.

Defendant admits that the shipment hereinabove referred to should have been moved without unnecessary or unreasonable delay and for itself it denies that there was an
66 unreasonable delay on its part in the transportation of said shipment, while on its line and alleges the truth to be that it moved said shipment promptly and without delay and made delivery of same to the Complainant within a reasonable and proper time after the receipt of said shipment from its connecting carrier, to-wit:—Alabama & Vicksburg Railroad Company.

The Defendant further denies that it was in any manner responsible for any delay which occurred on other Railroads than the defendant, if in fact such delay occurred and it alleges that if there was an unreasonable delay the delay occurred before delivery to the defendant and not after.

This defendant denies that the Complainant is entitled to subject any funds appearing to be due the Texas & Pacific Railroad Company for the payment of complainant's claim against said Railroad Company for the reason that this defendant is advised and believes that the Texas & Pacific Railroad Company is now under the control and operation of the Director General, to-wit:—Honorable William G. McAdoo, previously appointed by Proclamation of the President issued on, to-wit:—the 26th day of December, 1917, taking over into the control and under the operation of the United States, the properties of common carrier Railroads, which Act of the President aforesaid was by Act of Congress March 21st, 1918, duly confirmed and provided for; that when service of summons was made on this defendant it, this defendant, was, then also under the control and operation of the Director General, to-wit:—William G. McAdoo, and was not as is provided by the Act of March 21st, 1918, subject to such process as would apply to the property or accounts of any Railroad then under the control and operation of the Director General aforesaid.

Wherefore, touching the prayer of Complainant, this defendant says that the Complainant is without right or
67 authority to procure the information requested and is without power or authority to tie up while in its possession any property or funds that might belong to the Texas & Pacific Railroad Company. However, further touching said matter, the defendant states that it in fact was not indebted to the [Texas Pacific] Railroad Company when served with process in this case, nor has it since become so indebted, nor had it then, nor has it now, nor has it since had any property belonging to the Texas & Pacific Railroad Company in its possession or under its control; that in fact property and accounts which under normal conditions would have been the property and accounts of the Texas & Pacific Railroad Company are, for the period of the war, the prop-

erty and accounts of the United States Government by virtue of the fact as aforesaid that the Government has now taken over the operation and control of the Texas & Pacific Railroad Company and the defendant does not as a business entity in fact, have charge of said property and accounts but it only has charge of same as an agent and representative in that respect of the Director General, who is himself the agent and representative of the Government of the United States.

Wherefore this defendant prays that it be dismissed with all costs in this behalf sustained.

GULF & SHIP ISLAND RAILROAD CO.,
By B. E. EATON, Attorney.

State of Mississippi,
County of Harrison,
City of Gulfport.

Before me, the undersigned authority in and for the aforesaid City, County and State, personally appeared B. E. Eaton, who, as Attorney for the Gulf and Ship Island Railroad Company, makes oath that the matters and facts
68 set forth in the foregoing Bill of Complaint are true and correct as stated therein, except those stated on information and belief, which he believes to be true.

B. E. EATON, Affiant.

Sworn to and subscribed before me this 13 day of June, 1918.

(Seal) A. F. KELLY, Notary Public.

(Endorsements)

5552

Dantzler Lbr. Co.

vs.

Texas & Pacific R. R. Co.
Answer of G. & S. I. R. R. Co.

Filed June 14th, 1918.
Jno. J. Murphy, Clerk.

69 **"REPLY TO PLEA OF DEFENDANT, G. & S. I. R. R. CO."**

In Chancery Court.

State of Mississippi,
County of Harrison.

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Railroad Company et al.

Comes the complainant and for reply to the plea or answer of the Gulf and Ship Island Railroad Company in this cause, says that the matters set out therein are untrue, and that it is not so that the money in the hands of said railroad, the property of the Texas and Pacific Railroad Company, is not subject to garnishment in this cause.

And this complainant is ready to verify.

WHITE & FORD,
Attorneys for complainant.

(Endorsements)

5552

L. N. Dantzler Lbr. Co.

vs.

T. & P. R. Ry. Co. et al.

Reply to plea of G. & S. I. R. R.

Filed Oct. 10th, 1919
Jno. J. Murphy, Clk.

70 **"ANSWER OF YAZOO & MISSISSIPPI VALLEY RAILROAD CO."**

In the Chancery Court of Harrison County,

State of Mississippi.

No. 5552

L. N. Dantzler Lumber Company

vs.

The Texas & Pacific Railway Company, et al.

Now comes the Yazoo & Mississippi Valley Railroad Company, Garnishee, in the above styled cause, and for answer to said garnishment, states:-

1. That it is not indebted to the Texas and Pacific Railway Company in any sum whatever, and was not so indebted at the time of the service of the writ on it, and has not been at any time since the service of the writ indebted to the defendant company in any sum.

2. This garnishee further answering says, it has no effects of the defendant, The Texas and Pacific Railway Company, in its hands, nor did it have at the time of the service of the writ on it, nor has it since had any effects of the defendant in its hands or in its possession or under its control.

3. It does not know or believe that any other person is indebted to the defendant, The Texas and Pacific Railway Company, in any sum.

4. It does not know or believe that any person has any effects of the defendant, The Texas and Pacific Railway Company, in its possession or under its control.

And now having fully answered this garnishee prays to be dismissed with its costs.

YAZOO & MISSISSIPPI VALLEY R. R. CO.,
By ROBT. B. MAYES, Atty.

71 State of Mississippi,
County of Hinds.

Personally came before me, E. L. Trenholm, a Notary Public in and for said State and County, the above named Robert B. Mayes, agent and attorney for the Yazoo & Mississippi Valley Railroad Company, who having been by me first duly sworn, on oath states that the foregoing answer of the Yazoo & Mississippi Valley Railroad Company is true and correct to the best of his information and belief.

ROBT. B. MAYES,

Agt. & Atty, for Yazoo & Miss. Valley R. R. Co.

Sworn to and subscribed before me this the 15th day of June, 1918.

(Seal)

E. L. TRENHOLM,
Notary Public.

(Endorsements)

5552

L. N. Dantzler Co.

vs.

T. & P. R. R. Co., Y. & M. V. R. R. Co., Garnishee.

Answer of Y. & M. V. R. R. Co.

Filed this the 17th day of June, 1918.

Jno. J. Murphy, Clerk.
Robt. B. Mayes, Atty.

72 **"ANSWER OF MOBILE & OHIO RAILROAD COMPANY, GARNISHEE."**

In the Chancery Court of Harrison County, Mississippi.

To June Term, 1918.

L. N. Dantzler Lumber Company

vs.

Texas & Pacific Railway Company and Mobile & Ohio Railroad Company.

The Answer of the Mobile & Ohio Railroad Company to the Bill of Complaint.

The Mobile & Ohio Railroad Company, reserving any exceptions which may be had or taken to the errors and deficiencies of said Bill, for answer thereto says:

(1) That respondent is a corporation which was, until the 26th day of December, 1917, engaged in operating a railroad a part of which was in the State of Mississippi.

(2) That on the 26th day of December, 1917, the President of the United States, by proclamation issued in pursuance of law, took possession and assumed control for the Government of the United States of the Transportation systems of the United States including all of the property of the Mobile & Ohio Railroad Company and of the defendant, the Texas & Pacific Railway Company used in transportation as common carriers, and the said proclamation was in part, as follows: "Except with the prior written assent of said Director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers".

(3) That the Congress of the United States ratified the said act of the President of the United States and provided for the control and operation of the railroads of the
73 United States, including the property of this defend-

ant and the property of the Texas & Pacific Railway Company by an Act, approved March 21st, 1918, entitled, "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners and for other purposes". In Section 10 of the said Act it was provided, "that no process, Mesne or final shall be levied against any property under such Federal control".

(4) That any money which may have been due from the Mobile & Ohio Railroad Company to the Texas & Pacific Railway since the service of the writ in this case upon this defendant is property under the control of the Federal Government, within the meaning of the said proclamation of the said President and the said Act of Congress, under the orders of the Director General of Railroads for the United States Government, appointed by the President.

(5) That this defendant is advised that this is a suit in attachment, and that this Company was made a party defendant simply as a garnishee, in order that any indebtedness from this defendant to the Texas & Pacific Railway Company might be condemned to pay the demand of the complainant, against the said Texas & Pacific Railway Company, and the writ served on this defendant for that purpose is mesne process within the meaning of the said Act of Congress providing, "that no process mesne or final shall be levied against any property under such Federal control"; and the attempt in this case to attach any money due from this defendant and the Texas & Pacific Railway Company and condemn such indebtedness to pay the demands of the complainant against the Texas & Pacific Railway Company is in violation of the said Act of Congress and is void.

(6) Although this defendant avers that the writ in
74 this case is illegal and void, as aforesaid, it attaches hereto as a part of this answer, a statement showing in full the amounts due from this defendant to the Texas & Pacific Railway Company on the date of the service of the writ on this defendant, and of all amounts which have since become due. The said statement does not include certain

amounts which in due course of business have not yet been ascertained but which are in process of ascertainment.

And now having fully answered, respondent prays to be hence dismissed with its reasonable costs in its behalf incurred.

MOBILE & OHIO RAILROAD COMPANY,
By W. W. MIDDLETON, Comptroller.

McDONALD & MARSHALL, Solicitor.

State of Alabama,
Mobile County.

This day personally appeared before me, Carroll T. Prince, a Notary Public in and for said County and State, W. W. Middleton, who is to me well known, and who being by me first duly sworn, says on oath, that he is comptroller of the Mobile & Ohio Railroad Company under Federal Control, and, as Comptroller, is head of the Accounting Department thereof; that the matters and things stated in the foregoing answer, including the statement of indebtedness of the Mobile & Ohio Railroad Company to the Texas & Pacific Railway Company, are true and correct, as therein stated.

W. W. MIDDLETON.

Sworn to and subscribed before me on this the 15th day of June, 1918.

CARROLL T. PRINCE,
(Seal) Notary Public, Mobile County, Alabama.

75 MOBILE AND OHIO RAILROAD COMPANY.

Statement of Amounts Due by the Mobile and Ohio Railroad Company to the Texas and Pacific Railway Company as Shown by Books.

At March 31, 1918—	
Unpaid Vouchers	$1,149.77
Interline Ticket Account	151.54
Car Service	983.20
Freight Claims	43.68
Total	$2,328.19
At April 30, 1918—	
Unpaid Vouchers	$2,227.64
Interline Ticket Account	109.17
Car Service	661.35
Freight Claims	55.78
Total	$3,053.94

Comptroller's office,
Mobile, Alabama,
June 15, 1918.

(Endorsements)

5552

Dantzler Lbr. Co.

vs.

Texas & Pacific Railway Co., et al.
Answer of Mobile & Ohio R. R. Co.

Filed June 17th, 1918.
Jno. J. Murphy, Clerk.

76 **"REPLY TO PLEA OF DEFENDANT, M. & O. R. R. CO."**

State of Mississippi, In Chancery Court.
County of Harrison.

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Railroad Company, et al.

Comes the complainant and for reply to the plea or answer of the Mobile and Ohio Railroad in this cause, says that the matters set out therein are untrue, and that it is not so that the money in the hands of said railroad, the property of the Texas and Pacific Railroad Company, is not subject to garnishment in this cause.

And this, complainant is ready to verify.

WHITE & FORD,
Attorneys for Complainant.

(Endorsements)

5552

L. N. Dantzler Lumber Co.

vs.

T. & P. R. R. Co.

Reply to Plea of M. & O. R. R. Co.

Filed Oct. 10th, 1919.
Jno. J. Murphy, Clk.

77 **"MOTION FOR DECREE PRO CONFESSO."**

The State of Mississippi, Chancery Court.
Harrison County. June Term, 1918.

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Railway Co.

Comes the complainant and moves the Court to grant a decree pro confesso against the said defendant, Texas &

Pacific Ry. Co., it having been served with process according to law & failing to plead, answer or demur.

This June 18th, 1918.

WHITE & FORD,
Complainant's Solicitors.

(Endorsements)

No. 5552

Chancery Court, Harrison County, Miss.
L. N. Dantzler Lumber Co.

vs.

T. & P. Ry. Co.

Motion for decree pro confesso.

Filed June 18, 1918.
Jno. J. Murphy, Clerk.

Motion Docket 13, page 175.

78 **"DECREE PRO CONFESSO"**

(Min. Book 17, page 219
(June Term, 1918)

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co., et al.

This cause coming on to be heard on motion of complainant for a decree pro confesso against the defendant, Texas & Pacific Ry. Co., and it appearing to the Court that said defendant has been summoned according to law and has failed to appear & plead, answer or demur, the allegations of said bill of complaint are hereby taken as confessed against said defendant.

Ordered, adjudged and decreed this 26th day of June, 1918.

W. M. DENNY, JR.,
Chancellor.

(Endorsements)

5552

L. N| Dantzler Lbr. Co.

vs.

T. & P. Ry. Co.

Decree pro confesso against T. & P. R. R. Co.
Filed June 26, 1918.

Jno. J. Murphy, Clerk.
Recorded M 17, p. 219.

79 **"MOTION TO DISMISS AS TO L. & N. R. R. CO."**

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co., et al.

Comes the complainant and moves the Court for leave to dismiss the bill of complaint as to the defendant, Louisville & Nashville Railroad Company, defendant.

WHITE & FORD,
For Motion and Complainant.

(Endorsements)

5552

Dantzler Lbr. Co.

vs.

T. & P. R. R. Co.

Motion to dismiss as to L. & N. R. R. Co.

Filed June 24, 18.
Jno. J. Murphy, Clerk.

M. D. 13, P. 190.

80 **"MOTION TO DISMISS CAUSE AS TO M. & O. R. R. CO."**

vs. No. 5552

Dantzler Lumber Co.

Texas & Pacific Railway Co., et al.

Motion of Mobile & Ohio Railroad Co.

Comes the Mobile & Ohio Railroad Company, garnishee, by its attorneys and moves the Court to dismiss the writ of garnishment served upon it in this case and to discharge it, with its costs, as garnishee and for reasons aver that said writ and the service thereof are void and no valid judgment may be rendered against said garnishee for the reasons set out in said Garnishee's answer on file in said case, and for other reasons to be assigned at a hearing of this motion.

MOBILE & OHIO RAILROAD CO.
By McDONALD & MARSHALL,
Attorneys.

(Endorsements)

No. 5552

Dantzler Lbr. Co.

vs.

Texas & Pacific Railway Co. et al.

Motion of Mobile & Ohio Railroad Company.
Filed July 10, 1918.

Jno. J. Murphy, Clerk.

Motion Docket 13, page 196.

81 **"ORDER DISMISSING CASE AS TO DEFENDANT, L. & N. R. R. CO."**

(Min. Book 17, page 221.
(June 26, 1918, June term
(1918).

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co. et al.

This cause coming on to be heard on motion of complainant for an order dismissing the bill of complaint as to the defendant, Louisville & Nashville Railroad Company and the Court having considered the same, it is ordered, adjudged and decreed that the bill of complaint be and the same is hereby dismissed as to the defendant, Louisville & Nashville Railroad Company.

Ordered, adjudged and decreed this 26th day of June, 1918.

W. M. DENNY, JR.,
Chancellor.

(Endorsements)

5552

Dantzler Lbs. Co.

vs.

Texas & Pacific Ry. Co.

Order dismissing bill as to defendant L. & N. R. R. Co.
Filed June 26, 1918.

Jno. J. Murphy, Clerk.
Recorded M. 17, page 221.

82 **"ORDER TO SET CAUSE DOWN"**

State of Mississippi,
County of Harrison.

In Chancery Court to June Term, 1918.

No. 5552.

L. N. Dantzler Lumber Company

vs.

T. & P. Railway Company, et al.

The Clerk will please set this cause down for hearing on bill of complaint, answers of defendants, decree pro confesso against the Texas and Pacific Railway Company, and oral evidence to be offered at the hearing.

WHITE & FORD,
Attorneys for Complainant.

June 22nd, 1918.

(Endorsements)

No. 5552.

Chancery Court, Harrison County.

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co. et al.

Order to set down.

Filed June 22, 1918.
Jno. J. Murphy, Clerk.

White & Ford, Attorneys for complainant.

Entered Issue Docket No. 6 page 16

83 **"DECREE"**

No. 5552.

State of Mississippi,
County of Harrison.

In Chancery Court to June, 1918, Term.

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Railway Company, et als.

Min. Book 17 pg 278
June term 1918
(July 9th, 1918).

This cause coming on to be heard on bill of complaint, decree pro confesso against The Texas and Pacific Railway Company, answers of Vicksburg, Shreveport and Pacific Railway Company, Alabama and Vicksburg Railway Company, Gulf and Ship Island Railroad Company, Yazoo and Mississippi Valley Railroad Company, Mobile and Ohio Railroad Company, and the motion of the Mobile and Ohio Railroad Company to dismiss the writ of garnishment served upon it in this cause, and to discharge it as garnishee, and also oral evidence offered at the hearing, and the court having considered said cause, it is ordered, adjudged and decreed that said motion of the Mobile and Ohio Railroad Company be sustained, and the writ of garnishment dismissed as to it, and the complainant then and there in open court asking for decree agaist the other defendants in said cause, said relief was by the Court denied, the Court being of the opinion that it had no jurisdiction, and the bill of complaint dismissed, to all of which complainant excepted.

It is further ordered that appeal with supersedeas be allowed upon the complainant entering into bond in the sum of Sixty-five hundred Dollars ($6500.00), or if the complainant desires, an appeal is allowed without supersedeas.

84 It is further ordered that complainant pay the costs of this suit.

Ordered, adjudged and decreed this the 9th day of July, A. D. 1918.

W. M. DENNY, Jr.,
Chancellor.

(Endorsements)

No. 5552

Dantzler Lbr. Co.

vs.

T. & P. Rway Co. et al.

Decree.

Filed Jul. 9, 1918
Jno. J. Murphy, Clerk.
Minute 17 page 278

85 **"NOTICE TO THE STENOGRAPHER."**

Gulfport, Miss., July 10, 1918.

Miss Nona L. Hornor, Special Stenographer,

Gulfport, Miss.

Dear Madam:-

You will please transcribe your stenographic notes in the case of L. N. Dantzler Lumber Company v. Texas and Pacific Railway Company, et al., No. 5552, tried at the June term, 1918, of the Chancery Court of Harrison County, Mississippi, and file the same with the Chancery Clerk as the law requires, as the complainant desires an appeal in said cause to the Supreme Court of Mississippi.

Yours very truly,

WHITE & FORD,
Attorneys for Plaintiff.

Mr. John J. Murphy, Clerk,

Gulfport, Miss.

Dear Sir:-

We, White & Ford, attorneys for complainant in the case of L. N. Dantzler Lumber Company v. Texas and Pacific Railroad Company No. 5552, hereby certify that the original notice of which the foregoing is a copy has this day been handed to Miss Nona L. Hornor, Special Court Stenographer.

WHITE & FORD,
Attorneys for Complainant.

(Endorsements)

No. 5552

86 Dantzler Lbr. Co.

vs.

T. & P. Rway Co. et al.

Notice to Stenographer

Filed July 30, 1918
Jno. J. Murphy, Clerk.

87 **"STENOGRAPHER'S TRANSCRIPT OF EVIDENCE"**

State of Mississippi,
Harrison County.

In Chancery Court to June term, 1918.

No. 5552.

L. N. Dautzler Lumber Co.

vs.

Texas & Pacific Railway Co., et al.

J. J. TAYLOR,

a witness on behalf of the complainant, having been duly sworn, testified as follows:-

Direct Examination.

Q. What is your name?
A. J. J. Taylor.

Q. Do you live in Gulfport?

A. Yes sir.

Q. Who are you working for?

A. The G. & S. I. R. R. Co.

Q. Mr. Taylor do you remember an occasion last October, when you accompanied a shipment of cattle that was consigned to L. N. Dantzler Lumber Co. at Howison, Miss. Did you accompany that shipment from Ft. Worth, Texas here?

A. Yes sir.

Q. Is that the only shipment you accompanied for the L. N. Dantzler Lbr. Co.?

A. Yes sir.

Q. Do you remember about the date of the shipment?

A. About October 10th.

Q. Do you know the passenger train time from Ft. Worth, Texas to Howison?

A. I have forgotten.

88 Q. Do you know about how long it takes?

A. Around seventeen hours.

Q. Mr. Taylor was there any rough handling of that shipment of cattle while you were with it?

A. Yes sir.

Q. State how you mean?

A. On account of having to detour, that is on account of the wreck.

Q. State whether or not the cattle got behind a wreck?

A. The Texas and Pacific, as I understand it, had put on a heavy class of engine, different from any we have, and unfortunately turned an engine over in a fill about an eighth of a mile long between Marshall and Fort Worth, and wrecked the fill to such an extent it would take weeks to repair, but anyway we had to detour all freight north of Greenville, Texas.

Q. In that detour was there any rough handling?

A. Yes, bound to be.

Q. Were the cattle handled properly or not?

A. I do not think so. No.

Q. Was there enough jarring and rough handling to injure the cattle?

A. Yes sir.

Q. Was that handling such as to damage them to any considerable extent?

A. Yes, I would say so.

Q. Did you see the cattle unloaded?

A. Yes sir.

Q. What was their appearance?

A. Several in very bad shape; the cattle looked weak,
89 very weak, had to take some out by hand; some of them were not able to take care of themselves.

Q. You are a railroad man are you not?

A. Yes sir.

Q. You know whether or not it is the custom of railroads to run stock trains on fast time?

A. Yes sir, get through as early as possible.

Q. You say the cattle were roughly handled?

A. Yes sir, considerable jolting and jarring.

Q. How many times were they fed?

A. Twice.

Q. Fed and watered twice?

A. Yes sir, fed one time at some little place near Ft. Worth and then at Vicksburg.

MR. J. B. DORSETT,

a witness on behalf of complainant, after having been duly sworn, testified as follows:-

Direct Examination by W. H. White.

Q. What are your initials, Mr. Dorsett?

A. J. B.

Q. Where do you live?

A. Wiggins.

Q. What business are you in?

A. General merchandise, farm, stock raising.

Q. Have you had experience in stock?

A. Yes sir.

Q. Are you a stock man?

90 A. Yes sir.

Q. Did you ever go to Texas, around Fort Worth and assist in buying a lot of stock for L. N. Dantzler Lumber Company?

A. Yes sir, I went with Mr. Lawler.

Q. That is the shipment involved in this law suit?

A. Yes sir.

Q. Cattle were shipped around 10th of October?

A. Yes sir.

Q. State, in your purchase of cattle, what kind of cattle you purchased, the condition of herd at the time of the shipment?

A. We went out to range and looked them over last Saturday in September. The cattle were on good pasture, in fair shape, some fat, some not so fat. Some good for beef and some not. All in thrifty condition. We traded for them. Mr. Lawler closed trade with thirty per cent cut think it was twenty per cent, or ten per cent cut, that he would not want out of the whole bunch. He asked me what I think, and I said good buy.

Q. Were those cattle strong and healthy, or were they not?

A. They were strong and healthy.

Q. Were they able to make trip from Ft. Worth to Howison if properly handled & properly fed & watered without damage to the herd?

A. Yes sir.

Q. Did you see them after they were unloaded here?

A. I saw them after they were loaded in Fort Worth.

Q. Were they in good condition?

A. Yes sir.

Q. Did you see them after they got to Howison?

91 A. I never saw them then.

Q. Did you make a trip recently from Fort Worth to Shreveport?

A. Yes sir.

Q. What time did it take you to go from Fort Worth to Shreveport?

A. Was round nearly eight or nine hours.

B. C. LAWLER,

a witness on behalf of the complainant, after being duly sworn, testified as follows:—

Direct Examination, by W. H. White.

Q. What is your name?

A. B. C. Lawler.

Q. Where do you live?

A. Blackwell, Mississippi.

Q. Are you connected with the Dantzler Lumber Company?

A. Yes sir.

Q. Are you familiar with shipment of cattle, shipped from Fort Worth, over the Texas and Pacific Railway?

A. Yes sir.

Q. Who purchased those cattle?

A. I did.

Q. Was Mr. Dorsett with you?

A. Yes sir.

Q. Mr. Lawler, go ahead and state to the Court what kind of cattle they were with reference to strength and health.

A. When I bought these cattle, all were in good thrifty condition then. I did not want to ship fat cattle at that season of the year. I said about 60% were bred, and Mr. Dorsett said about 75%. We found out at least 90 or 95% were bred cattle, would bring calves in the spring.

92 Good [health] condition and well able to stand the trip From Fort Worth to Howison if they came through on time.

Q. When did they reach Howison?

A. Walter I exactly dont know. I figure by the morning they got to Howison, about 110½ hours on the trip.

Q. Were any killed in transit?

A. Yes sir. Some were killed, some died and some I was never able to account for.

Q. Were they properly loaded or not?

A. Improperly loaded, when they reach Howison. Left Ft. Worth properly loaded. Some cars are different. Some hold 26 head some 35 to 38. I will say for the information of the Judge, it is customary in Texas in buying bulls, you pay to have them tied, pay $1.00 a piece to have them tied. If they are not tied they horn the cattle around.

Q. How many cattle were killed in transit?

A. I dont remember.

Q. The number killed in transit is the correct number you filed in your claim for damages, is it not?

A. Yes sir.

Q. Have any died since?

A. Yes, dying now.

Q. How many have died since?

A. That is problematical. We have got cattle there been in bad physical condition all along line. May have lost 20 to 50. May have lost 50, expect we have.

Q. Out of this herd?

A. Yes.

Q. What was [lost] due to?

93 A. I consider it due to rough handling, bad treatment on the trip in first of winter.

Q. Have they been properly treated since arrived at Howison?

A. Yes.

Q. Did you pay the freight on that shipment?

A. Yes.

Q. How much did you pay?

A. About $1500.00.

Q. State to the Court how that shipment looked when they were unloaded at Howison?

A. Judge, I would not have known they were the same cattle I bought in Texas. Mr. Dorsett said the same thing.

Q. Were they weak or strong?

A. Weak, tails broken down, lame.

Q. Had they lost weight?

A. Oh Lord, I guess they had, didnt look like the same cattle we had bought out there.

Q. Could you tell by looking at them whether they had received the proper amount of food and water?

A. I dont think any animal in the world would have looked the same as these looked if they had had the proper amount of water and food.

Q. Were any bruised?

Q. Yes sir. Had a couple of ribs broken, tails broken down, lost calves on road coming over here.

Q. About the ordinary vitality of these cattle, how would they have stood the trip?

A. You can't tell in a herd like that. I presume ten per cent of them would not. I attribute it to rough handling.

Q. Would they have suffered the injury they have, if they had been properly handled?

94 A. No.

Q. Was it necessary to give them additional feed on

account of the treatment received on the trip?

A. Yes sir. The man here handled cattle all winter, and he had to give the Texas cattle unusual amount of feed.

Q. Were you offered price for cattle at Fort Worth above what you paid for them?

A. Yes, I had two offers. The best offer was from a man from Arkansas. I gave $45.00 and expense about $5.00, making $50.00 each, and he offered $5.00 profit.

Q. State whether or not the market price has increased.

A. I can only tell you this, I went back out to Texas after a load of bulls and I stopped in Houston and the same class of cattle I bought in Fort Worth—I gave $45.00 in Fort Worth, and the same cattle in breed, white face, were from $75. to $85 for same cattle.

Q. Would you say you had sustained injury on account of the delay in transit & failure to feed & water & the rough handling?

A. Yes, we sustained loss that average man would not recognize. I bought all she-cattle, only two bulls. The she-cattle were bred with calves. We suffered not only loss for today but for years to come.

Q. Are they losing calves now?

A. Yes.

Q. Are you required to still give the cattle extra attention?

A. Not right now, but will have to again because of cattle being badly handled. We have to put them on cotton seed meal.

95 Q. Has the production of the herd been diminished?

A. Yes sir, will be for years to come.

Q. How much in money, have you been damaged on account of the matters complained of in the bill complaint?

A. Walter, have to gather from that * a honest idea—if these cattle were on my range as they were when I bought them in Texas with calves, they were worth $10,000.00 more then than now, I would make an estimate of five or six thousand dollars damages.

Q. Do you [contribute] that damage to the injury they sustained?

A. I [contribute] that to people not getting cattle here to me on time.

Q. Do you [contribute] it to rough handling?
A. Yes sir, we lost calves on road, you see.

I. BLACKWELL,

a witness in behalf of complainant, having been duly sworn, testified as follows:

Direct Examination, by Mr. White.

Q. What is your name?
A. I. Blackwell.
Q. Where do you live?
A. Blackwell post office.
Q. How far do you live from place Mr. Dantzler keeps the herd?
A. Right on place.
Q. Have you seen the herd often?
A. Yes.
Q. Mr. Blackwell, did you see these cattle soon after
96 they were unloaded?
A. I saw them two days after they were taken out of cars.
Q. What was the condition of the cattle.
A. Mighty bad off.
Q. Did any look weak?
A. Some just could manage to travel, and soreness and lame.
Q. You have dealt in cattle considerable, have you not?
A. Yes sir, been dealing in cattle more or less all my life.
Q. Mr. Blackwell, assuming that the shipment of cattle came from Fort Worth, Texas to Howison, and took 110½ hours for the trip, and they got behind a wreck and were delayed a day or two, and were not properly fed and watered as often as they ought to be, how much would you consider the damage to ten car loads of cattle?
A. It would be lots. From what I saw of them after they went to farm, the damage would be five or six thousand dollars. Something like that.

MR. ——— BLACK,

a witness in behalf of complainant, having been duly sworn, testified as follows:—

Direct Examination, by Mr. White.

Q. What is your name?
A. ——— Black.

Q. Are you familiar with the ten car loads of cattle L. N. Dantzler Lumber Company got from Fort Worth, Texas?
A. Yes sir.

Q. Have you been working with the cattle any?
A. Yes.

Q. Did you see them unloaded?
97 A. No sir.

Q. How long after they were unloaded before you saw them?
A. Three days, I went up and helped drive them down.

Q. What was their condition then?
A. Mighty bad fix, to me.

Q. What do you mean?
A. Not watered and scarred.

Q. They were scarred?
A. Yes, and legs broken, and tails knocked down.

Q. Did any die on road?
A. Yes sir.

Q. Did you help take care of them?
A. All winter.

Q. Assuming these cattle were bought in good condition and shipped from Fort Worth, if improperly handled between Fort Worth and Howison, how much damage would be done by reason of rough handling and delay in transportation, say they were 110½ hours on the road?

A. I think they were damaged heap. I have been handling cattle since I was nine years old.

Q. How long have you been handling oxen for Dantzler Lumber Company?

A. For about 18 months one place and seven years another.

I hereby certify that the above and foregoing is a true and correct copy of the evidence taken by me on the 9th day of July, in the above styled cause.

NONA L. HORNOR,
Stenographer.

98 Approved as corrected Aug. 5, 1918.

WHITE & FORD,
Atts. for Complainant.

(Endorsements)

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Rwy. Co.

Stenographer's Transcript of Oral Evidence.

Filed August 5th, 1918.
Jno. J. Murphy, Clerk.

99 **"MANDATE AND COPY OF OPINION OF SUPREME COURT."**

The State of Mississippi,

To the Honorable the Chancery Court of Harrison County, Greeting:

Whereas, on the Third day of March, 1919, the same being a day of the regular term of our Supreme Court, begun and held in the Court Room, in the Capitol, in the City of Jackson, in said State, on the Second Monday of October, in the year of our Lord 1918, the following final decree was rendered by our Supreme Court, to-wit:-

L. N. Dantzler Lumber Co.

No. 20,572. vs.

Texas & Pacific Railway Co. et al.

This cause having been submitted at a former day of this term on the record herein from the Chancery Court of Har-

rison County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 9th day of July, 1918, be and the same is hereby reversed and this cause remanded and that appellees do pay the costs of this appeal to be taxed, etc.

You are therefore hereby commanded, that such execution and further proceedings be had in said cause as, according to right and justice, the judgment of our Supreme Court, and the law of the land, ought to be had.

Witness, the Hon. Sidney Smith, Chief Justice of the Supreme Court; also the signature of the Clerk, and the seal of said Court, hereunto affixed, at office, in Jackson, this, the 19th day of July, 1920.

100

W. J. BUCK,
Clerk.

(Endorsements)

Supreme Court.

L. N. Dantzler Lumber Co.

No. 20572 vs. Mandate

Texas & Pacific Ry. Co. et al.

To the Chancery Court of Harrison County.

Filed July 20, 1920.

Eustis McManus, Clerk.

In the Supreme Court of Mississippi

No. 20,572.

L. N. Dantzler Lumber Co.

vs. (5792)

Texas & Pacific Ry. Co. et al.

Division B.

Etheridge, J.

The appellant filed a bill for attachment in the Chancery Court under Section 536, Code of 1906, section 293 Hem-

mingway's Code, against the Texas & Pacific Railway Company, a foreign corporation operating between Ft. Worth, Texas, and Shreveport, Louisiana; and against the Vicksburg, Shreveport and Pacific Railway Company, a railway corporation operating between Shreveport, Louisiana, and Vicksburg, Miss., the Alabama & Vicksburg Railway Company, the Louisville & Nashville Railroad Co.; the Gulf & Ship Island Railroad Company; the Yazoo & Mississippi Valley Railroad Co.; the Illinois Central Railroad Co.,
101 and the Mobile & Ohio Railroad Co. alleging that on the 10th day of October, 1917, the Texas & Pacific Railway Company agreed with complainant in consideration of a freight rate paid therefor to transport for the complainant from Fort Worth, Texas, to Howison, Miss., ten car loads of cattle, the property of the complainant, and issued bill of lading therefor; that the cattle were transported over the Vicksburg, Shreveport & Pacific Railroad Company; over the Alabama & Vicksburg Railroad to Jackson, Miss., and over the Gulf & Ship Island Railroad to Howison, Miss. That said cattle were unreasonably delayed in transportation, having been in transportation for one hundred and ten and a half hours, and they were only fed twice during the said period of time, and that they were roughly handled in transit by the Texas & Pacific Railway Company, and roughly handled to a certain extent by all the other carriers over which they moved, and as a result said cattle were injured and died in transit to the value of $600.00, and other cattle were damaged in the sum of $5,600.00, and that by said damage a number of cattle died after being unloaded. And others were so injured and diseased, that it took expensive treatment for them to recover from said injuries. It was alleged in the bill that the Louisville & Nashville Railroad Co., the Illinois Central Railroad Co.; the Yazoo & Mississippi Valley Railroad Co. and the Mobile & Ohio Railroad Company, and also the carriers over which the shipment moved, were indebted unto the Texas & Pacific Railroad Company, and will be further indebted to said defendant in the future, pending the trial of this cause, and process was brought against each of defendants to answer said bill and to disclose in what sum and in what amounts each were

indebted to the Texas & Pacific Railway Co. This bill was filed March 25, 1918, summons issued to all defend-
102 ants, except the Texas & Pacific Railway Co., for which publication was made.

The defendants severally answered the bill, the Illinois Central Railroad Co., the Louisville & Nashville Railroad Co.; the Yazoo & Mississippi Valley Railroad Co., and the Mobile & Ohio Railroad Co. (being garnishee alone), each except the Mobile & Ohio Railroad Co. answered that they were not indebted to the Texas & Pacific Railway Co., but on the contrary that the said Texas & Pacific Railway Co. was indebted to said garnishees. The Mobile & Ohio Railroad answered the bill, admitting an indebtedness on the 31st day of March, 1918, as follows:

Unpaid vouchers, $1,149.77; interline [tockets] account $151.54; car service $983.20; freight claims $43.68; total on March 31, 1918, $2,232.19. And that accruing from March 31st to April 30th, 1918, there were unpaid vouchers for $2,227.64, interline ticket account $109.17; car service $661.35; freight claims $55.78.

The answer of the defendant, Mobile & Ohio Railroad Co. set up that the respondent Mobile & Ohio Railroad Co. is a corporation which was until the 26th day of December, 1917, engaged in operating a railroad, a part of which was within the State of Mississippi; that on said date the President of the United States issued a proclamation and took possession and assumed control for the Government of the United States of the transportation system of the United States including all of the property of the Mobile and Ohio Railroad Co., and of the defendant, Texas & Pacific Railway Co. used in transportation as common carriers, and the said proclamation was in part as follows: "Except with the prior written assent of said director, no attachment by mesne process or in execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers."
103 That the Congress of the United States ratified the said act of the President of the United States and provided for the control and operation of the railroads of

the United States including the property of the Mobile and Ohio Railroad Co., and of the Texas & Pacific Railway Co., by an act approved March 21st, 1918, entitled "An Act to provide for the operation of transportation systems while under federal control, for the just compensation of their owners and for other purposes". That by section 10 of the said act it was provided, "That no process mesne or final shall be levied against any property under such federal control." It further alleged that any money that may be due from the Mobile & Ohio Railroad Co. to the Texas & Pacific Railway Co., since the service of the writ upon the Mobile & Ohio Railroad Co. is property under the control of the Federal Government within the meaning of said proclamation of the President and the said Act of Congress under the orders of the Director General of Railroads. It alleged further that the company was made a party simply as a garnishee in order that any indebtedness of this defendant to the Texas & Pacific Railway Co. might be condemned to pay the demand of the complainant, against the Texas & Pacific Railway Co. and alleged that the writ served on this defendant for that purpose is mesne process within the meaning of the said act of Congress and was in violation of law and void.

The defendant after filing this answer moved the Court to dismiss the proceedings as to the Mobile & Ohio Railroad Co. and discharge it, which motion the trial judge sustained. The Texas & Pacific Railway Co. did not answer and decree pro confesso was taken and proof of the amount of
104 damage introduced. The G. & S. I., A. & V., and V. S. & P. Railroad Companies denied the allegations of the bill so far as their respective handling of the cattle is concerned, and answered that they had no information as to the allegations against the Texas & Pacific Railway Co. except that they say that the delay in transportation was not unreasonable. After the court dismissed the case against the Mobile & Ohio Railroad the complainant moved for judgment against the V. S. & P., T. & P., A. & V. and G. & S. I. Railroad Companies but the court below held that it had no jurisdiction, and dismissed the bill. From this judgment the L. N. Dantzler Lumber Company appealed here.

The principal question for determination is whether or not the Mobile & Ohio Railroad Co. could be garnisheed as a foundation to sustain the attachment against the Texas & Pacific Railway Co., no other property belonging to the Texas & Pacific Railway Co. than this indebtedness of the Mobile & [Phio] Railroad Co. being found in the State. The Bill was filed on the 25th day of March, 1918, and the garnishment served on the Mobile & Ohio Railroad [Railroad] Co. on the same date.

On the 26th day of August, 1916, Congress enacted a law, one section of which only is pertinent to this cause, which reads as follows:

> "Control of transportation systems in time of war.—The President, in time of war, is empowered, through the Secretary of War, to take possess and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as [for] as may be necessary of all other traffic thereon, for the transfer and transportation of troops, war material, and equipment, or for such other purpose connected with the emergency as may be needful or desirable".

105 39 Statute at Large ch. 418 sec. 1, U. S. Compiled Statutes 1918, Compact Edition, p. 274.

On the 26th day of December, 1918, the President issued a proclamation reciting that it had become necessary in the national defense to take possession and assume control of certain systems of transportation and utilize the same, to the exclusion so far as may be necessary of all other traffic thereon, for the transportation of troops, war material and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war. In this proclamation is found the following:

> "Until and except so far as said Director shall from time to time otherwise by general and special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and

orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director, shall have paramount authority and be obeyed as such".

On the 11th day of April, 1918, the President issued another proclamation taking possession and assuming control, through Acting Secretary of War, at 12:01 A. M. on the 13th day of April, 1918, of each and every system of transportation, naming certain steamship and other transportation companies, to be exercised under the direction and control of William G. McAdoo, Director General of Railroads. After the promulgation of these orders or proclamations of the President, based upon the statute above quoted, the different transportation companies took the position that the railroads were under the control of the Government and that they had the right to remove
106 causes to the federal courts and that they could not be sued without the consent of the United States. On the 21st of March, 1918, by 40th Statute at Large, ch. 25, Congress passed an additional act dealing with the subject of governmental control of railroads and other transportation concerns. In Section 10 of said act of March 21, 1918, section 3115-¾ U. S. Compiled Statutes, 1918, Compact Edition p. 458, it is provided:

"Liabilities of carriers: actions by and against:—Carriers while under Federal control shall be subject to all laws and liabilities of common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other act applicable to such Federal control or with any order of the President.

Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law, and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government.

Nor shall any such carrier be entitled to have transferred to a Federal Court any action heretofore or hereafter instituted by or against it, which action was not so transferable prior to the Federal control of such carrier; and any action which has been heretofore been so transferred because of such Federal control or of any Act of Congress or official order or proclamation relating thereto shall upon motion of either party be [retansferred] to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control".

In Section 13, Chapter 25, 40th Statute at Large U. S.
107 Compiled Statutes, 1918, Compact Edition, 3115 3/j p. 459, it is provided:

"Pending cases against carriers.—All pending cases in the courts of the United States affecting railroads or other transportation systems brought under the Act to regulate commerce, approved February, fourth, eighteen hundred and eighty seven, as amended and supplemented including the commodities clause so called, or under the Act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, and amendments, thereto, shall proceed to final determination as soon as may be, as if the United States has not assumed control of transportation systems; but in any such case the court having jurisdiction may, upon the application of the United States, stay execution of final judgment or decree until such time as it shall deem proper".

Section 15, chp. 25, 40th Statute at Large, of the Act of March 21st, 1918, section 3115 -¾ j U. S. Compiled Statutes, 1918, Compact Edition, 9, 459, provides:

"Existing laws or powers of states.—Nothing in this act shall be construed to amend, repeal, impair or affect the existing laws or powers of the States in relation to taxation, or the lawful police regulations of the several states, except wherein such laws, powers or regulations

may affect the transportation of troops, war material, Government supplies, or the issue of stocks and bonds".

It will be noted from the sections above quoted of the Act of March 21, 1918, that while under Federal control, the carriers shall be subject to all laws and liabilities as common carriers whether arising under State or Federal
108 laws or at common law, except so far as may be inconsistent with the provisions of this act, or with any order of the President, and that actions may be brought against such carriers and judgment rendered as now provided by law; and that in any action at law, or suit in equity, against the carrier no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. It will be seen from an analysis of this provision that the carrier when sued is forbidden to set up the very defence it attempts to set up in this case. Such defence can only be made by the Director General intervening.

By reference to section 15 above quoted from it is provided that nothing in this act shall be [construed] to amend, repeal, impair or affect the existing laws or powers of the states in relation to taxation or the lawful police regulation of the several states except wherein such laws, powers, or regulations may affect the transportation of troops, war material, government supplies or the issue of stocks and bonds. It is clear from this section that it was not the purpose of Congress in enacting these laws to displace the state control any further than was necessary to enable the Government to carry on war activities, transporting the troops, war materials, government supplies, and issuance of bonds. In all other respects it was the intent of Congress to leave the laws of the States in full force. It is exceedingly doubtful whether Congress could enact laws that would prohibit states from administering relief in its courts to litigants, and it has been held by the U. S. Supreme Court that:

"In a State where federal authority was always unopposed and its courts always open to hear criminal accusations and redress grievances, no usage of war

could sanction a military trial for any offense whatever, of a citizen in civil life, in nowise connected with the
109 military service. Congress could grant no such power.

"The right of trial by jury is preserved to every one accused of crime, who is not attached to the Army, or Navy or Militia in actual service.

"Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration".

Again, by the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggles to preserve liberty and to relieve those in civil [live] from military trials. The founders of our government were familiar with the history of that struggle; and secured in a written Constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it, this question must be determined."

Again

"These securities for personal liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people, that these rights, highly prized, might be denied them by implication that when the original Constitution was proposed for adoption it encountered severe opposi-
110 tion; and, but for the belief that it would be so amended as to embrace them, it would never had been ratified.

"Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain En-

glish words, that it would seem the ingenuity of man could not evade them, and now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The constitution of the United States, is a law for [reulers] and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the constitution, has all the powers granted to it, which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority."

Again:

"But it is said that the jurisdiction is complete under the 'laws and usages of war'.

"It can serve no useful purpose or inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be
111 applied to citizens in States which have upheld the authority of the Government, and where the courts are open and their process unobstructed. This court has judicial knowledge [than] in Indiana the federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances; and usage of war could sanction a military trial there for any offense whatever of a citizen in civil life, in no wise connected with the military service. Congress

could grant no such power; and to the honor of our National Legislature be it said, it has never been provoked by the State or the Country even to attempt its exercise. One of the plainest [constitution] provisions was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress and not composed of judges appointed during good behavior".

Again:

"The discipline necessary to the efficiency of the army and navy, required other and swifter modes of trial than are furnished by the common law courts, and, in pursuance of the power conferred by the Constitution, Congress has declared the kinds of trial and the manner in which they shall be conducted, for offenses committed while the party is in the military or naval service. Every one connected with these branches of public service is amenable to the jurisdiction which Congress has created for their government and, while thus serving, surrenders his right to be tried by the civil courts. All other persons, citizens of states where the courts are open, if charged with crime, are guaranteed the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administra-
112 tion of criminal justice; it is not held by sufferance, and cannot be frittered away on any plea of state or political necessity. When peace prevails, and the authority of the government is undisputed, there is no difficulty in preserving the safeguards of liberty; for the ordinary modes of trial are never neglected, and no one wishes it otherwise, but if society is disturbed by civil commotion if the passions of men are aroused and the restraints of law weakened, if not disregarded—these safeguards need, and should receive, the watchful care of these entrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.

"It is claimed that martial law covers with its broad mantle the proceedings of this Military Commission. The proposition is this; that in a time of war the com-

mander of an armed force (if in his opinion the exigencies of the country demand it, and of which he is the judge) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of his will; and in the exercise of his lawful authority, cannot be restrained except by his superior officer or the President of the United States.

"If this proposition is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force
113 for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

"The Statement of this proposition shows its importance; for, if true, republican government is a failure and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guaranty of the Constitution, and [effectially] renders the 'military independent of and superior to the civil powers'—the attempt to do which by the King of Great Britain was deemed by our fathers such an offence, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable and in the conflict, one or the other must perish. This nation as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and human rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right be conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to

the trust reposed in them. They knew the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such a time, was [expecially] hazardous to freedom.
114 For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written Constitution the safeguards which time has proved were essential to its preservation. Not one of these safeguards can the President or Congress or the judiciary disturb, except the one concerning Habeas Corpus".

Again:

"The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right, and left the rest to remain inviolable. But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily, it is not so".

Again:

"Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration." Ex parte Milligan, 4 Wall. 2; 18 L. ed. 281 et seq.

The war powers of national government have been elaborately discussed by the U. S. Supreme Court in the Milligan case, supra; Texas v. White, 7 Wall. 700 et seq; Ex parte

Langs, 21 l. ed. U. S. 875; Ochoa v. Morales, 230 U. S. 139, 57 L. ed. 1427.

115 Under section 10 of the amendments of the constitution of the United States all powers not granted to the National Government and not prohibited to the states, are reserved to the states respectively or to the people. Under this [provisions] it has been decided by the U. S. Supreme Court that all powers relating merely to municipal, legislation or to internal police are not surrendered by the States, and in relation to these the power of a State is unqualified and exclusive. New York V. Miln. 11 Pet (U. S.) 102, 9 L. ed. 648; United States Vs. Cruikshank, 92 U. S. 542, 23 L. ed. 588; Butcher's Union & Co. V. Crescent City Live Stock & c Co. 111 U. S. 746, 28 L. ed. 585.

That the purpose of this amendment is to put beyond all dispute that the powers not granted by the Constitution to the Federal Government are reserved to the people. Kansas V. Colorado, 206 U. S. 46, 51 L. ed. 956. It has been often said that this Government is a government of divided powers, those powers of a national character being vested in the National Government, and all other powers vested in the State Government. That this country is now, has been and must be "an indestructible Union of indestructible States".

Construing the statutes above quoted from, and the proclamation of the President in connection with the decisions of the Supreme Court, we are bound to conclude that it was not the purpose of either the President or Congress to prohibit the State courts from entertaining jurisdiction and proceeding to judgment in all cases as heretofore, but that the only purpose was to prevent states from seizing property necessary to be used in the maintenance of the transportation system of the country for the use of the National Government.

116 In the case before us there is no effort to impair the railroad service by taking any of the property used in operation of railroads and especially for the purposes named in the statutes above quoted from, and it is therefore unnecessary to say whether an execution could be levied or not. No effort is here made to levy an execution against the property used in transportation, but the garnishment here merely brings the Mobile & Ohio Railroad Company into court to answer whether it is indebted to the Texas & Pacific

Railway Company, and if so, that the Court may render proper judgment fixing the rights of the parties with reference to such fund, but does not involve the seizure of any money or other property in such way as to interfere with the Director General's direction of the railroads.

The proclamation of the President prohibiting execution or other mesne process does not prevent and was not intended to prevent a proceeding of the character here involved. The word "mesne" means intermediate, intervening, the middle between two extremes, Black's Dictionary. As defined by the Circuit Court of the United States in Moredock V. Kirby, 118 Fed. 180 at p. 185, Judge Evans in delivering this opinion says:

> "In Goldy V. Morning News, 156 U. S. 519, 15 Sup. Ct. 559 30 L. ed. 517, allusion is made by the Court to the service of 'Mesne process' up the 'Authorized agent' of a defendant, but mesne process and original process and final process are different things. Bouvier, in his Law Dictionary, defines the former by saying that 'process which is issued in a suit between the original and final process is called 'mesne process'. The Court, of course, used the word advisedly, and had nothing in view an interlocutory notice, or something of a kindred nature".

The 15th Section of Chapter 25, 40 Statutes at Large, Act of March 21, 1918, in express terms reserves the lawful police regulations in the several states except as to regu-
117 lations which may affect the transportation of troops, war material, Government supplies or the issuance of bonds. This recognition of police regulations means to reserve to the States all the police power of the State unimpaired except as to the subjects excepted in the Statute, and in Volume 6, Words & Phrases, 1st. ed. p. 5439, we find the following:

> "Police regulations are such provisions of law as are designed to protect the lives, limbs, health, comfort and quiet of citizens, and secure them in the enjoyment of their property which can be invoked only for an interference with one's dominion over his own property to

prevent such use of it by him, or its continuance in such condition as would be detrimental to the community.".

Again:

"Laws and ordinances relating to the safety, comfort, health, convenience, good order, and general welfare of the inhabitants are styled 'police regulations' ".

In Cooley on Constitutional Limitations, star page 574, we find the following definition by that distinguished author:

"In the American constitutional system the power to establish the ordinary regulations of police has been left with the individual states, and cannot be assumed by the National Government. Neither can the National Government through any of its departments or officers assume any supervision of the police regulations of the States, so long as they do not invade the sphere of national sovereignty, and obstruct or impede the exercise of any authority which the constitution has confided to the nation".

It is unnecessary now to decide whether an execution could issue after final judgment or not. That question can be decided when it properly arises. We are satisfied
118 that it was not the meaning of Congress, nor of the President, to undertake to prohibit the states from administering justice and to compel the discharge of lawful obligations or to protect private rights. It is clear to us that the garnishee is not entitled to plead the question presented by its answer in this cause, and that it was the purpose of Congress to prohibit these questions being presented by the railroads. It is presumed that when the judgment is established in a court of competent jurisdiction that the Director General operating the carriers will discharge such obligations against such carriers, or permit such carries to do so without question. We are satisfied that Congress and President did not intend to suspend the collection of debts against carriers or to grant the carriers immunity from judgments and the payment of its own obligations.

We think the learned Court below erred in discharging the Mobile & Ohio Railroad Company as garnishee and in

holding that it had no jurisdiction to proceed to determine the controversy before it.

It is urged here by the appellee, Vicksburg, Shreveport & Pacific Railroad and the Alabama & Vicksburg Railway that the judgment should be affirmed as to them, because the cause was set down for hearing less than four months after the answer was filed and therefore the answer must be taken as true. In as much as the Chancellor held that he had no jurisdiction, we think the cause should be reversed and remanded in accordance with law, and the case is accordingly reversed and remanded.

Reversed and remanded.

Stevens, J. took no part in the consideration and decision of this case.

119 State of Mississippi,
Hinds County.

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi, do hereby certify, that the foregoing is a true and correct copy of the opinion delivered by the Court in the cause therein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office, in the City of Jackson, Miss., this the 19th day of July, A. D. 1920.

(Seal) W. J. BUCK, Clerk Supreme Court.

(Endorsements)

#5552

No. 20,572

L. N. Dantzler Lumber Co.

Vs.

Texas & Pacific Ry. Co. et al.

Copy of Opinion

Filed July 20, 1920
Eustis McManus, Clerk.

Minutes Supreme Court of Mississippi. March Term, 1919

Monday, May 5th., 1919.

L. N. Dantzler Lumber Co.

No. 20572

Texas & Pacific Railway Co. et al.

This cause coming on to be heard on suggestion of error filed herein and this court having sufficiently considered the same, doth order, adjudge and decree that said suggestion of error be and the same is hereby overruled.

120 **"ANSWER OF MOBILE & OHIO RAILROAD COMPANY"**

In the Chancery Court of Harrison County, Mississippi.

L. N. Dantzler Lumber Company

vs.

Texas & Pacific Railway Company, et al.

Answer of the Mobile & Ohio Railroad Company to the Bill of Complaint

The Mobile & Ohio Railroad Company, reserving any and all exceptions which may be had or taken to the errors and efficiencies of said bill, for answer thereto says:

(1) That respondent is a corporation which was, until the 28th day of December, 1917, engaged in operating a railroad as a common carrier, a part of which was in the State of Mississippi.

(2) That no summons in this case has ever been served upon any officer or agent of Respondent, and Respondent has not heretofore appeared in this cause; That Respondent is informed that a summons was issued by the Clerk of this Court, directed to the Sheriff of Lauderdale County, Mississippi, directing him to summons Respondent, and that said summons was served on the 27th day of March, 1918, by the Sheriff of Lauderdale County, Mississippi, upon an agent at Meridian, Mississippi of the Director General of Railroads, engaged in the operation of the property of Respondent known as the Mobile & Ohio Railroad; that the

said agent was not in the [employee] of and was not the agent or representative of respondent in any respect whatsoever; that at that time, Respondent was not engaged in the business of a common carrier in Mississippi or elsewhere, and was not in possession or control in any degree or respect whatsoever of its property known as the Mobile &
121 Ohio Railroad Company, at Meridian, Mississippi, or anywhere else; that the property of respondent known as the Mobile & Ohio Railroad was one of the railroads of which the United States took possession and control on the 28th day of December, 1917, by proclamation of the President of the United States, pursuant to law, and that Respondent has never at any time since that date been in the possession or control of its said property, and has never at any time since said date been engaged in the business of a common carrier, or any other business of any character whatsoever, within the State of Mississippi, and has never since said date had any agent or [respresentative] in the State of Mississippi.

(3) Respondent is further informed and so states, that after the service of said summons upon an agent of the Director General of Railroads at Meridian, Mississippi, the Director General of Railroads, through his agent and officers engaged in the operation of said railroads, W. W. Middleton, Federal Auditor, and Carl Fox, General Solicitor, prepared and filed an answer which was intended to be an answer of the Director General of Railroads and was not intended to be the answer of this Respondent, the Mobile & Ohio Railroad Company. Respondent avers that the said W. W. Middleton and Carl Fox were not officers or agents of this Respondent and were not in the employ of this Respondent, and that they had no authority from this respondent or otherwise to file an answer in the name of or on the behalf of this respondent, and that if the said answer filed by them for and on behalf of the Director General of Railroads is susceptible of being construed on its face as the answer of this Respondent, this respondent is nevertheless not bound thereby. Respondent is informed and believes that as a matter of fact that the said W. W. Middleton and Carl Fox did not assume to represent this respondent and that they

122 did not intend to file an answer in the name of or on the behalf of this respondent.

(4) Respondent avers that at the time of the service of the said summons upon the Agent of the Director General of Railroads at Meridian, Mississippi, as aforesaid, this Respondent was not indebted and has never been since and is not now indebted to the Texas & Pacific Railway Company; that Respondent did not have at the time of the said service of said summons, and has not had since and has not now any property or effects of the Texas & Pacific Railway Company in Respondent's possession or under its control; that Respondent does not know of any other person who was at the time of the service of said summons indebted to the said Texas & Pacific Railway Company, or who has or has had at any time since any of the effects or property of said Texas & Pacific Railway Company in his possession or under his control.

(5) Respondent further avers that on October 27th, 1916, in the suit of Union Trust Company of New York and Benjamin F. Edwards as Trustee against St. Louis, Iron Mountain and Southern Railway Company, consolidated cause No. 1065, and B. F. Bush, Receiver of the Railroads and property of St. Louis Iron Mountain & Southern Railway Company against Texas & Pacific Railway Company, No. 1120, both causes in equity in the District Court of the United States for the Western District of Louisiana, Monroe Division, receivers were appointed of all of the property of every kind and description of the Texas & Pacific Railway Company, principal defendant herein; and from the said 27th day of October, 1916, until the 28th day of December, 1917, said Railroad and properties were operated by the said receivers and not by the Texas & Pacific Railway Company, the principal defendant herein; that on the said 28th day of December, 1917, the United States took possession and control of the railroad owned by the Texas & Pacific Railway

123 Company and all its property connected with the operation thereof, along with the other transportation systems of the United States, and has continuously operated the said Railroad to the exclusion both of the said Texas & Pacific Railway Company and of the said receivers ever since; that the said receivers under the decree of said Court took over all accounts receivable and indebtedness of every

kind due the Texas & Pacific Railway Company, and that there was not after the appointment of said receivers at any time any indebtedness due the Texas & Pacific Railway Company, either from this Respondent or from the Director General of Railroads on account of the operation of this Respondent's property.

(6) Respondent avers that if any decree should be rendered in this case against this Respondent for any sum of money whatsoever, Respondent would be required to pay money that it did not owe and never owed, and for which it had never received any consideration or compensation, and Respondent would be deprived of the equal protection of the laws and of its money and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. Respondent further avers that under the Proclamation of the President of the United States taking possession for the United States of Respondent's property along with other transportation systems and the Act of Congress of the United States dated the 21st day of March, 1918, known as the Federal Control Act and the General Orders of the Director General of Railroads made in pursuance of authority vested in him by the President's proclamation and said act of Congress, Respondent is exempted from suit or judgment in this case, and if any decree should be rendered against Respondent herein, in any sum whatsoever, Respondent would be deprived of its Federal rights under said Proclamation, Act of Congress, and
124 Orders of the Director General of Railroads.

(7) Respondent is advised that it was made a party defendant merely as a garnishee and that it is not required to answer the other matters and things alleged in the bill of complaint. Respondent has no information regarding the alleged cause of complaint against the Texas & Pacific Railway Company set out in the original bill.

And now having fully answered, Respondent prays to be hence dismissed with reasonable costs in its behalf incurred.

MOBILE & OHIO RAILROAD COMPANY,
By C. B. HAYES,
Vice President.

CARL FOX,
McDONALD & MARSHALL,
Solicitors for Respondent.

State of Alabama,
Mobile County.

This day personally appeared before me, L. A. Deornellas a Notary Public in and for said County and State, C. B. Hayes, who is to me well known, and who being by me first duly sworn, says on oath that he is Vice President of the Mobile & Ohio Railroad Company, and that the matters and facts alleged in the foregoing answer are true and correct as therein stated except such things as are alleged upon information and belief, and as to such averments, he is informed and believes that they are true as therein stated.

C. B. HAYES.

Sworn to and subscribed before me this 7th day of February, 1920.

L. A. DEORNELLAS,
(Seal) Notary Public Mobile County, Ala.

My commission expires March 15, 1923.

125 (Endorsements)

#5552

L. N. Dantzler Lbr. Co.

vs.

Texas & Pacific Railway Co., et al.

Answer of M. & O. R. R. Co.

Filed Feby. 9th, 1920.
Eustis McManus, Clerk.

By Chas. Hewes, D. C.

126 **"AMENDED ANSWER OF DIRECTOR GENERAL OF RAILROADS"**

In the Chancery Court of Harrison County, Mississippi.

L. N. Dantzler Lumber Company

vs.

Texas & Pacific Railway Company et al.

Amended Answer of the Director General of Railroads.

The Director General of Railroads, by R. V. Taylor, Federal Manager, Mobile & Ohio Railroad, by leave of Court, files this amended answer to the Bill of complaint, the former answer of the Director General of Railroads having been filed in the name of the Mobile & Ohio Railroad Company; and for amended answer to the original bills says:

1. That on the 26th day of December, 1917, the President of the United States by proclamation issued in pursuance of law, took possession and assumed control for the Government of the United States of the transportation systems of the United States, including all of the property of the Mobile & Ohio Railroad Company and of the defendant, the Texas & Pacific Railway Company, used in their business of common carriers. By the said proclamation the President created the office of Director General of Railroads and appointed William G. McAdoo to fill said office, with the authority and duty to possess, control and operate the said transportation systems, including the railroads of the Mobile & Ohio Railroad Company and the Texas & Pacific Railway Company. The said William G. McAdoo resigned and was succeeded by Walker D. Hines, the Present Director General of Railroads. The summons in this case directed to the Sheriff of Lauderdale County, Mississippi, commanding him to summons the Mobile & Ohio Railroad Company a corporation, was served by the said Sheriff on an

127 agent of this Respondent, the Director General of Railroads, at Meridian, Mississippi, employed by this respondent, the Director General, in the operation of the Mobile & Ohio Railroad, which was and is the property of the Mobile & Ohio Railroad Company; that the said Mobile

& Ohio Railroad Company was not in possession or control of and was not operating its railroad known as the Mobile & Ohio Railroad in the State of Mississippi, or elsewhere, and in fact has not been in possession or control of and has not operated or had anything to do with the operation of its said railroad since the 28th day of December, 1917. The agent of this Respondent, the Director General of Railroads, upon whom the said summons was served was not an agent or in the employ of the Mobile & Ohio Railroad Company.

2. On the 27th day of October, 1916, Receivers for the railroad and all other property of the Texas & Pacific Railway Company were appointed by decree in the District Court of the United States for the Western District of Louisiana, Monroe Division, in those suits styled Union Trust Company of New York and Benjamin F. Edwards as Trustee against St. Louis, Iron Mountain & Southern Railway Company, Consolidated Cause No. 1065 and B. F. Bush Receiver of the Railroads and property of the St. Louis Iron Mountain & Southern Railway Company against the Texas & Pacific Railway Company No. 1120, both in equity, and from the said 27th day of October, 1916, to the 28th day of December, 1917, the railroad owned by the Texas & Pacific Railway Company was operated exclusively by the Receivers appointed by said Court. A certified copy of said decree is filed herewith as Exhibit "A" to this amended answer. On the said 28th day of December, 1917, the railroad and all other property of the Texas & Pacific Railway Company were taken from the possession of the said Receivers
128 by the United States Government by proclamation of the President in pursuance of law, including all of the accounts receivable of the said Receivers and indebtedness of every character to said Receivers and since the said 28th day of December, 1917, the railroad of the said Texas & Pacific Railway Company has been controlled, possessed and operated exclusively by the United States, by and through this Respondent, the Director General of Railroads.

3. The answer heretofore filed in the name of the Mobile & Ohio Railroad Company was intended to be and was in fact the answer of this Respondent, the Director General of Railroads, and the indebtedness admitted therein to be due the Texas & Pacific Railway Company was the indebt-

edness of this Respondent and not the indebtedness of the Mobile & Ohio Railroad Company. This Respondent filed said answer through his officers engaged in the operation of the Mobile & Ohio Railroad Company, W. W. Middleton, whose title at that time was Comptroller of the Mobile & Ohio Railroad under Federal control and Carl Fox, whose title at that time was Attorney for the Mobile & Ohio Railroad, under Federal control. The said W. W. Middleton and Carl Fox were not in the employ of the Mobile & Ohio Railroad Company and had no authority as I am informed and believe, to file said answer for the Mobile & Ohio Railroad Company. The answer was filed in the name of the Mobile & Ohio Railroad Company for the reason that the Proclamation of the President, taking possession and control of the Mobile & Ohio Railroad and other railroad systems of the United States, required the Director General of Railroads to continue the operation thereof in the usual and ordinary course of business of common carriers in the names of the respective railroad companies and this requirement of the proclamation of the President was not abrogated or modified by the Act of Congress of March 21, 1918,
129 known as the Federal Control Act, which further provided for the operation of the railroads by the Director General. It was thought probable, therefore, since the Director General was required to carry on the business of a common carrier by means of the property of the Mobile & Ohio Railroad Company in the name of said company to file this Respondent, the Director General's answer in the name of the Mobile & Ohio Railroad Company also. After this answer was filed, in order to avoid the confusion which existed in the minds of the people and especially of the lawyers and of the Courts, which confusion resulted in the rendering of judgments against the railroad companies on causes of action against the Director General of Railroads, the Director General issued his General Order No. 50, afterwards amended by his General Order No. 50-A, providing that suits on causes of action arising out of the operation of railroads by the Director General and on contracts made by or in behalf of the Director General, should be brought against the Director General of Railroads and not against the railroad companies.

4. This Respondent, the Director General of Railroads, was not indebted to the Texas & Pacific Railway Company at the time of the service of the said summons upon the Director Generals agent engaged in the operation of the Mobile & Ohio Railroad at Meridian, Mississippi, either on account of the operation of the Mobile & Ohio Railroad by the Director General or because of the taking over by the United States on the 28th day of December, 1917, of the accounts receivable and payable of the Mobile & Ohio Railroad company, along with the physical properties of the said company; because the Texas & Pacific Railway Company had not operated its railroad known as the Texas & Pacific Railroad at any time between the date of the appointment of the Receivers as aforesaid on the 27th day of October,
130 1916, and the date when the United States took possession and control of the railroad and other property of the said Texas & Pacific Railway Company on the 28th day of December, 1917. If any indebtedness had accrued from the Mobile & Ohio Railroad Company to any one on account of the operation of the railroad and other physical property of the Texas & Pacific Railway Company prior to the 28th day of December, 1917, when the United States took possession and control of the railroads, it was an indebtedness to the said Receivers and not to the Texas & Pacific Railway Company. The United States took possession and control of the accounts receivable and payable of the Mobile & Ohio Railroad Company along with its railroad and other physical property, as well as the accounts receivable and payable of the said Receivers of the Texas & Pacific Railway Company, and thereafter no indebtedness which might have been due from the Mobile & Ohio Railroad Company to the said Receivers, if the United States had not taken possession and control of said properties, was subject to garnishment in this case, because it was provided both in the proclamation of the President and the Federal Control Act that no process, mesne or final, shall be levied against such property under Federal control and the writ of garnishment in this case is mesne process within the meaning of said proclamation and Act. Respondent avers that as a matter of fact there was and could not in the nature of things be any [indebtednes] subject to garnishment in any event from this

Respondent on account of his operation of the Mobile & Ohio Railroad to this Respondent on account of his operation of the railroad owned by the Texas & Pacific Railway Company; that he operated both properties in the same official capacity and there could be no indebtedness from Respondent to Respondent.

5. This Respondent, the Director General, says that he
131 was not indebted to and did not have in his possession or control any property or effects of the Texas & Pacific Railway Company at the time of the service of the aforesaid summons or at any time since and is not now so indebted and has not now any property or effects of the said company in his possession or control; that he [known] of no one who at the time of the service of the said summons or at any time since or now was or is indebted to said Texas & Pacific Railway Company or had or has any property or effects of the said Company in his possession or under his control. Respondent avers that after the railroads were taken over by the United States as aforesaid, the accounting between different railroads on account of their operations by the Director General was continued as it was carried on between the different railroad companies prior to Government control and that in the sense that there was money due from the Director General on account of his operation of the Mobile & Ohio Railroad to the Director General on account of his operation of the Texas & Pacific Railroad, there was an indebtedness as set out in the original answer filed herein; but that it was not a debt in the true sense of the word or within the meaning of the laws of Mississippi, subjecting debts to garnishments in cases of this kind.

6. This respondent, the Director General of Railroads, avers that a suit against this Respondent is a suit against the United States, and the United States cannot be [used] without its consent; that the United States has not consented to be [suit] either in its own name or through this Respondent in the manner and for the purposes for which the writ of garnishment was issued against the Mobile & Ohio Railroad Company. On the contrary, in the Federal Control Act and in the proclamation of the President, the United

States has expressly declined to be sued in the manner
132 and for the purposes for which the writ of garnishment directed to the Mobile & Ohio Railroad Company was issued in this case.

7. Any decree rendered against the United States or against this Respondent, the Director General of Railroads, in this suit would be without authority of law and would deprive this Respondent of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and would deprive the United States of its money and property without its consent and in violation of the Act of Congress of March 21, 1918, known as the Federal Control Act and of the proclamation of the President of the United States referred to hereinabove.

8. This Respondent, the Director General of Railroads, is not informed of the facts with reference to the complaint as set out in the original bill against the Texas & Pacific Railway Company, and is advised that it is not necessary for him to answer with reference thereto.

And now, having fully answered, Respondent prays to be hence dismissed with reasonable costs in his behalf incurred.

WALKER D. HINES,
Director General of Railroads.

By M. J. WISE,
Staff Officer operation Mobile & Ohio Railroad.

CARL FOX,
McDONALD & MARSHALL,
Solicitors for the Director General of Railroads.

State of Alabama,
Mobile County.

This day personally appeared before me Carroll T.
133 Prince, a Notary public in and for said County and State, M. J. Wise, who is to me well known and who by me being first duly sworn, says he is Staff Officer—Operation of the Director General of Railroads, in the operation of the Mobile & Ohio Railroad and others, and that the matters and facts alleged in the foregoing answer are true

and correct as therein stated, except as to those things stated on information and belief, and as to such things he is informed and verily believes them to be true as stated.

M. J. WISE.

Sworn to and subscribed before me this 7th day of February, 1920.

CARROLL T. PRINCE,
(Seal) Notary Public, Mobile County, Ala.

134 **"EXHIBIT "A" TO AMENDED ANSWER OF THE DIRECTOR GENERAL OF RAILROADS"**

In the District Court of the United States
Within and for
The Western District of Louisiana,
Monroe Division.

In Equity

Consolidated Cause

No. 1065

Union Trust Company of New York and Benjamin F. Edwards, as Trustees, Complainants

Against

St. Louis, Iron Mountain and Southern Railway Company, Defendant

In Equity

No. 1120

B. F. Bush, Receiver of the railroads and property of St. Louis, Iron Mountain and Southern Railway Company,

Complainant
Against

The Texas & Pacific Railway Company, Defendant.

In the District Court of the United States Within and for The Western District of Louisiana, Monroe Division.

In Equity
Consolidated cause
No. 1065

135

Union Trust Company of New York and Benjamin F. Edwards, as Trustee, Complainants

Against

St. Louis, Iron Mountain and Southern Railway Company Defendant.

In Equity

No. 1120

B. F. Bush, Receiver of the railroads and property of St. Louis, Iron Mountain and Southern Railway Company,

Complainant
Against

The Texas & Pacific Railway Company, Defendant.

Order.

On reading and considering the verified bill of complaint and verified answer filed in this cause, and on motion of counsel for the complainant and the defendant, the Texas & Pacific Railway Company appearing by its counsel and consenting to the entry of this order, and due deliberation being had,

It is ordered, adjudged and decreed by the Court:

(1) That Pearl Wight and John L. Lancaster, be and they are hereby appointed Receivers of all and singular the railroads, lands, assets, rights, liens, claims, interests, franchises, and property, real personal and mixed, of whatsoever kind and description and wheresoever situated of the defendant The Texas & Pacific Railway Company (hereinafter sometimes called the defendant Railway Company), including (without prejudice to the generality of the foregoing de-

scription), all railroads leased, owned or operated by the defendant, Railway Company, with all tracks, terminal facilities, warehouses, offices, stations, shops and all other buildings and appurtenances of every kind, and all
136 locomotives, cars and other rolling stock and equipment of every kind and description, and all tools, machinery, furniture, fixtures, coal, materials and supplies, and all books of account, records, and other books, papers cash in bank, and all other moneys, all debts, things in action, credits, stock, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues and profits and income accrued, accruing and to accrue, as well as leasehold interests, trackage, terminal, operating and all other contracts and all rights, interests, liens, claims, easements, privileges, and franchises and including all property and assets of the defendant Railway Company of every kind and description and wheresoever situated, and whether held by the defendant Railway Company in its own name or for its benefit by trustees, agents or others, provided that this order shall not be construed to interfere with the possession by the Trans-Mississippi Terminal.

In the District Court of the United States Within and for

The Western District of Louisiana, Monroe Division.

In Equity

Consolidated Cause No. 1065

Union Trust Company of New York and Benjamin F. Edwards, as Trustees, Complainants

Against

St. Louis, Iron Mountain and Southern Railway Company, Defendant.

In Equity

No. 1120

B. F. Bush, Receiver of the railroads and property
137 of St. Louis, Iron Mountain and Southern Railway Company, Complainant

Against

The Texas & Pacific Railway Company, Defendant

Order

On reading and considering the verified bill of complaint and verified answer filed in this cause, and on motion of counsel for the complainant and the defendant The Texas & Pacific Railway Company appearing by its counsel and consenting to the entry of this order, and due deliberation being had,

It is ordered, adjudged and decreed by the Court:

(1)) That Pearl Wight and John L. Lancaster, be and they are hereby appointed Receivers of all and singular the railroads, lands, assets, rights, liens, claims, interests, franchises, and property, real personal and mixed, of whatsoever kind and description, and wheresoever situated of the defendant The Texas & Pacific Railway Company (hereinafter sometimes called the defendant Railway Company), including (without prejudice to the generality of the foregoing description), all railroads leased, owned or operated by the defendant Railway Company, with all tracks terminal facilities, warehouses, offices, stations, shops and all other buildings and appurtenances of every kind, and all locomotives, cars, and other rolling stock and equipment of every kind and description, and all tools, machinery, furniture, fixtures, coal, materials and supplies, and all books of account, records, and other books, papers, cash in hand, and all other moneys, all debts, things in action, credits, stocks, bonds, securities, deeds leases, contracts, muniments of
138 title, bills receivable, rents, issues and profits and income accrued, accruing and to accrue, as well as leasehold interests, trackage, terminal, operating and all

other contracts and all rights, interests, liens, claims, easements, privileges, and franchises and including all property and assets of the defendant Railway Company of every kind and description and wheresoever situated, and whether held by the defendant Railway Company in its own name or for its benefit by trustees, agents or others, provided that this order shall not be construed to interfere with the possession by the Trans-Mississippi Terminal Railroad Company of the property of the defendant Railway Company heretofore leased by the defendant Railway Company to said Terminal Company, or with any of the rights of the said Terminal Company under said lease.

(2) That said Receivers be and they are hereby authorized and directed immediately to take possession of all and singular said railroads, rolling stock, franchises, rights, property and premises, above described and referred to, wherever situated or found, whether in this State, this Judicial Circuit or elsewhere, including such railroads and property as the defendant Railway Company holds, controls or operates under lease, trackage, contracts, stock ownership or otherwise, and to run, manage, maintain and operate said railroads and property and to use, manage and conduct the business of the defendant Railway Company in such manner as in their Judgment will produce the best results and to this end to exercise the authority and franchises of the defendant Railway Company, and to discharge all public duties obligatory upon it and to preserve said railroads and property in proper condition and repair, and to manage and operate said railroads and property under the order of this Court and according to the requirements of the laws of the United States and of the valid laws of the various
139 states in which the same are situated, and in the same manner that the defendant Railway Company would be bound to do if in possession thereof, and to employ, discharge, and fix the compensation of such officers, attorneys, managers, superintendents, agents and employees as they may [deed] it necessary and proper to employ, and to keep such property insured to such an extent as they may deem advisable, and to carry on such pension system in respect of the officers and employees of the defendant Railway Com-

pany as said Receivers may deem advisable and to make such payments and disbursements as may be needful and proper in their judgment in so doing, and to collect and receive the income, rents revenues, tolls, issues and profits of said property, and to collect and receipt for all outstanding accounts, things in action and credits due or to become due or owing to the defendant Railway Company and all dividends on stock and interest on bonds or other securities belonging to it, and to hold and retain the net revenues of said property in such manner and to the end that the same may be applied under this order and under such other orders as this Court may hereafter make.

(3) That said Receivers be and they are hereby authorized and empowered to institute and prosecute within this State, Judicial Circuit or elsewhere, and in their own names as Receivers or in the name of the defendant Railway Company as they may be advised by counsel, all such suits as in their judgment may be necessary for the recovery or proper protection of said property or any part thereof, and the discharge of their trust, and likewise to [to] defend, compromise or settle and pay any and all claims, suits, actions and proceedings which may be made or instituted against them as Receivers on account of their liability as such Receivers.

That said Receivers are further authorized to appear
140 in and conduct the prosecution or defense of or compromise or settle any actions, proceedings or suits now pending or which may hereafter be brought in any Court or before any officer, department, commission, or tribunal in which the defendant Railway Company is or shall be a party, which in the judgment of said Receivers, affect or may affect the property of which they are hereby appointed Receivers; but except upon further order or direction of this Court no payment (except payment of costs and expenses incident to the prosecution or defense thereof) shall be made by said Receivers in respect of any such suits, actions or proceedings; and no action taken by the Receivers in the defense or settlement of any such actions or suits against the defendant Railway Company shall have the effect of establishing any claim upon or right in the property or funds in the possession of the Receivers so as to alter or change any existing equities or legal rights of the parties.

(4) That said Receivers be and they are hereby authorized in their discretion, from time to time, out of the funds coming into their hands, to pay (a) all taxes, assessments and other charges which are or may be imposed by the United States or any State, municipal or other governmental authority, due or to become due upon the property of the defendant Railway Company; (b) all installments of principal, interest, rentals or dividends which may be or become due upon equipment obligations issued under instructions of trust created in respect of the purchase or lease of equipment by the defendant Railway Company (c) all current expenses incident to the creation and administration of their trust and to the operation of the railways and property of which they are appointed Receivers, including among other expenses, the wages, salaries and compensation of all
141 officers, attorneys, managers, superintendents, agents, and employees, retained or employed by said Receivers, all sums which may become due to connecting or other railroads or common carriers for traffic and car mileage balances, equipment, repairs and other customary accounts incident to the interchange of business and all sums which may become due as rental for railroad, terminal or other facilities used by the defendant Railway Company, and also for the service of telephone, light, heat and power; (d) the following claims incurred by the defendant Railway Company within six months [preceeding] the date of this order, to-wit:—wages and salaries (including expenses incident to the services of all persons employed) due and payable for services rendered to the defendant Railway Company in the usual and customary operation of its properties, unpaid material and supply accounts incurred in the operation of said properties, unpaid and outstanding pay checks and wage checks representing labor actually performed for the defendant Railway Company, and all sums due to connecting or other railroads or common carriers for traffic and car mileage balances, equipment repairs and other customary accounts incident to the interchange of business, and all sums due as rental for railroad, terminal or other facilities used by the defendant Railway Company, and also for the service of telephone light, heat and power; and (e) all amounts now

or hereafter payable by sureties upon all supersedeas, appeal or other judicial bonds executed by said sureties for the benefit of the defendant Railway Company.

(5) That said Receivers shall open books of account and shall keep or cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the railroads and property of which they are hereby appointed Receivers and shall preserve proper vouchers for all payments made by them on account thereof, and
142 shall deposit the moneys coming into their hands in some bank or banks, and shall report to the Court the bank or banks so selected.

(6) That all persons, firms and corporations, having in their possession any of the property and premises of which the Receivers are hereby appointed, including all property of which the defendant Railway Company is or may become the beneficial owner, whether held by it or by other persons, firms, or corporations, as trustees, agents or otherwise, shall forthwith deliver such property and premises to said Receivers, and each and every of the officers, directors, agents and employes of the defendant Railway Company is hereby required and commanded forthwith to turn over and deliver to said Receivers or their duly constituted representatives any and all books of account, vouchers and papers, deeds, leases, contracts, bills, notes, shares, bonds, and other securities, accounts, moneys or other property in his or their hands or under his or their control belonging to or in the possession of the defendant Railway Company or to which it is or may become entitled, and each of said officers, directors, agents and employees is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by said Receivers or their duly constituted representatives in conducting the operation of said property and in the discharge of their duties as Receivers.

(7) That the defendant Railway Company, its officers, directors, agents, attorneys and employees and all persons claiming to act by virtue of or under it, and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, are hereby restrained and enjoined from interfering with, attaching, levying upon or in

any manner whatsoever disturbing any portion of the
143 property and premises of which the Receivers are hereby appointed or from taking possession of or in any way interfering with the same or any part thereof or from [interferring] in any manner to prevent the discharge by said Receivers of their duties in the operation of the property and premises under the orders of this Court.

(8) That said Receivers shall retain the possession of and continue to discharge the duties and trusts aforesaid until the further order of this Court, and shall from time to time make reports of their doings in the premises, and may from time to time apply to this Court for such other and further order and directions as they may deem necessary and requisite in due administration of their trust.

(9) That said Receivers within sixty days from the entry of this order, shall file with this Court an inventory of the property coming into their possession as such Receivers, and shall also file a separate report or reports showing the amount of moneys coming into their hands as such Receivers derived from the operation of the railroads and property of the defendant Railway Company prior to the entry of this order.

(10) Until otherwise directed said Receivers shall pay out of the funds coming into their hands, the cost of maintaining the corporate existence of the defendant Railway Company, including the expense of such necessary offices as may be required for the preservation of the records of the defendant Railway Company and the transfer of its stocks and bonds, including the necessary clerical force.

(11) That within ten days from the entry of this order said Receivers shall each execute and file with the Clerk of this Court a bond with one or more sureties approved by this Court or by one of the Judges thereof, for the
144 benefit of whom it may concern, in the sum of one hundred thousand dollars ($100,000) conditioned to the effect that each of said Receivers will well and truly perform the duties of his office and duly account for all moneys and property which may come into his hands, and abide by and perform all things which he may be directed by the Court to do.

(12) That the complainant herein may apply to any other court of competent jurisdiction for such order or orders in the premises as the complainant may deem necessary or proper in aid of the order issued by this Court. The right is reserved to the parties hereto to apply to this Court for any other instructions to the Receivers and the Court reserves the full right and jurisdiction to make from time to time such further orders amplifying, extending, limiting or otherwise modifying this order as to it may at any time seem proper and in all respects and at all times to regulate and control the conduct of said Receivers.

In case of the death, resignation or removal of either of the Receivers hereby appointed and the appointment of a successor or successors to said Receivers, all of the provisions of this order shall apply to such successor or successors without further order or direction of this Court.

October 27th, 1916.

(Signed) RUFUS E. FOSTER,
United States District Judge.

Endorsed: No. 1120 In Equity,

United States District Court,
Western District of Louisiana,

B. F. Bush Receiver of the railroads and property of St. Louis Iron Mountain and Southern Railway Company, Complainant, Versus The Texas and Pacific Railway Company, Defendant.

145 Ancillary and Dependent Bill of Complaint and Order appointing Receiver.

Filed October 27th, 1916.

Leroy B. Gulotta, Clerk, U. S. District Court,
West. Dist. of La.

United States District Court,
Western District of Louisiana.

Clerk's Office:—

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing ten pages contain a full, true and correct

copy of the Order Appointing Receivers in a cause entitled B. F. Bush, Receiver of St. Louis, Iron Mountain & Southern Railway Co. vs. The Texas & Pacific Railway Co., No. 1120 in Equity on the Docket of said Court as the original of same appears on file and of record in this office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this 6th day of December, A. D. 1918.

W. B. LEE,
Clerk, U. S. District Court, Western District of Louisiana.

(Seal)

(Endorsements)

#5552

L. N. Dantzler Lbr. Co.

vs.

Texas & Pacific Railway Co., et al.

Amended Answer of Director Genl. of Railroads.

Filed Feby. 9th, 1920.

146 Eustis McManus, Clerk,
By Chas. Hewes, D. C.

147 **"MOTION OF [COMPLAINT] TO STRIKE FROM FILES THE AMENDED ANSWER OF THE DIRECTOR GENERAL OF RAILROADS."**

No. 5552

L. N. Dantzler Lumber Co.

v.

Texas & Pacific Ry. Co., et al.

Comes the complainant and moves the Court to strike from the files in this cause the so called amended answer of the Director General of Railroads:

1. Because no leave of Court was obtained to file the same.

2. Because there is no original or other answer of said Director General to amend.

3. Because said Director General is not a party to the suit.

4. Because if the same could ever be filed it could not be filed on Feb. 9, 1920.

5. Because said paper raises nothing not already raised in the suit.

6. For other cause to be assigned.

WHITE & FORD,
For Complainant & for Motion.

(Endorsements)

No. 5552

L. N. Dantler Lbr. Co.

vs.

T. & P. Ry. et al.

Motion of Complainant to strike so called amended answer of Director General of RRs.

Filed 2/14, 1920.

Eustis McManus, Clerk,
By Chas. Hewes, D. C. MD 14, p. 57.

148 **"MOTION OF COMPLAINANT TO STRIKE FROM FILES THE ANSWER OF THE MOBILE AND OHIO RAILROAD COMPANY"**

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry., et al.

Comes the Complainant and moves the Court to strike from the files the so called answer of the M. & O. R. R. filed Feb. 9, 1920, and assigns the following reasons:

1. No leave of Court has been obtained to file the same.
2. Said answer is filed out of time.

3. Said defendant has already answered as shown by its answer on file.

4. Said defendant is merely a garnishee, no contest of its first answer has been filed and it attempts to defeat the case of complainant in direct violation of the opinion of the Supreme Court in this cause holding garnishees as neutral parties.

5. Said defendant has not paid the costs assessed against it in this cause when the case was reversed.

6. For the reason that said answer filed Feb. 9, 1920, is a direct departure and a complete variance from its answer already on file and shows bad faith.

7. For other causes to be assigned at the hearing.

WHITE & FORD,

For motion.

(Endorsements)

No. 5552

L. N. Dantzler Lbr. Co.

149 vs.

T. & P. Ry., et al.

Motion to strike answer of M. & O. R. R. filed Feb. 9, 1920. Filed 2/14, 1920

Eustis McManus, Clerk.
By [Chss.] Hewes, D. C.

150 **"DECREE SUSTAINING MOTIONS TO STRIKE FROM FILES AMENDED ANSWER OF DIRECTOR GENERAL OF RAILROADS AND ANSWER OF MOBILE & OHIO RAILROAD COMPANY, FILED FEBRUARY 9th, 1920.**

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry., et al.

There coming on to be heard the motions of Complainant to strike from the files the so called answer and amended answers of the Mobile and Ohio Railroad and Director Gen-

eral of Railroads, filed Feb. 9th, 1920, and the Court having considered the same is of the opinion said answers and amended answers should be stricken from the files, and it is so ordered.

Ordered, adjudged and decreed this 20th day of Feb., 1920.

W. M. DENNY, JR.,
Chancellor.

(Endorsements)

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific R. R. Co.

Decree sustaining motion to strike.

Filed Feby 20th, 1920
Eustis McManus, Clerk.

Recorded.
M 18 P 236.

151 **"MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL."**

State of Mississippi,
County of Harrison.

In Chancery Court to June Term, 1920.

No. 5552

L. N. Dantzler Lumber Company, Complainant,

vs.

Texas and Pacific Railway Company, et al., Defendants.

Comes the complainant and moves the Court for leave to file a supplemental bill in terms as set forth with a copy of same presented with this motion.

WHITE & FORD,
For motion.

(Endorsements)

L. N. Dantzler Lbr. Co.

v.

T. & P. Ry. Co., et al.

Motion for leave to file Sup. Bill

Filed May 20th, 1920
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

152 **"ORDER ALLOWING COMPLAINANT TO FILE SUPPLEMENTAL BILL."**

State of Mississippi,
County of Harrison.

In Chancery Court To June Term, 1920.

No. 5552

L. N. Dantzler Lumber Company, Complainant

vs.

Texas and Pacific Railway Company, et al., Defendants.

There coming on to be heard the motion of Complainant for leave to file a supplemental bill in terms as set forth in copy of same presented with said motion, it is hereby ordered adjudged and decreed that said complainant file said supplemental bill.

Ordered, adjudged and decreed this 19 day of May, 1920.

W. M. DENNY, JR.,
Chancellor.

(Endorsements)

No. 5552

Chancery Court Harrison County

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Ry. Co., et al.

Order allowing complainant to file supplemental bill

Filed May 20th, 1920.
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

Recorded M. 18, page 300.
White and Ford,
Attorneys for Complainant.

153 **"SUPPLEMENTAL BILL OF COMPLAINT."**

State of Mississippi,
County of Harrison.

In Chancery Court To June 1920 term.

No. 5552

L. N. Dantzler Lumber Company, Complainant

vs.

Texas and Pacific Railway Company, Mobile and Ohio Railroad Company, The Vicksburg, Shreveport & Pacific Railway Company, The Louisville and Nashville Railroad Company, The Gulf and Ship Island Railroad Company, The Yazoo & Mississippi Valley Railroad Company, The Illinois Central Railroad Company, The Alabama & Vicksburg Railroad Company,

Defendants.

Supplemental Bill

Complainant would respectfully show unto the Court that this supplemental bill is filed pursuant to authority here-

tofore obtained so to do. That the Complainant is a corporation organized and existing as alleged in said original bill on file in this cause and that the defendants are organized and domiciled as alleged in said original bill in this cause, reference to which is hereby made.

That the defendant, Texas and Pacific Railway Company is still indebted to the complainant in the sum of Fifty six hundred Dollars ($5600.00) and interest at the rate of six per cent (6%) per annum from November 1, 1917, and said defendant is a non resident of Mississippi.

That the defendants, Vicksburg, Shreveport & Pacific Railway Company, The Alabama & [Vicksbyrg] Railway
154 Company, The Louisville and Nashville Railroad Company, The Gulf and Ship Island Railroad Company, The Yazoo and Mississippi Valley Railroad Company, The Illinois Central Railroad Company, and Mobile and Ohio Railroad Company, are indebted to said Texas and Pacific Railway Company in large sums and have property of said defendant in their possession and under their control, which complainant is entitled to have subjected to its demand against said defendant Texas and Pacific Railway Company.

Wherefore, [Presmises] considered, complainant prays that process according to law and by publication issue directed to all defendants and that the defendants hereinbefore alleged to be indebted to defendant Texas and Pacific Railway Company be required to answer at June 1920 term of this Honorable Court, in what amounts they were indebted to said defendant at the time of service of summons on this supplemental bill, and during the time intervening between the service of summons and the time of answering, and what amount at the time of answering, and that they disclose all property in their hands or under their control, the property of said defendant, Texas and Pacific Railway Company, and that on final hearing a decree be entered subjecting said indebtedness and property to the claim of complainant.

And complainant prays for general relief.

And as in duty [bond,] etc.

WHITE & FORD,

Attorneys for complainant.

State of Mississippi,
County of Harrison.

Personally appeared before the undersigned authority in and for said County and State, W. H. White, one of the attorneys for complainant in the above styled cause, who
155 states on oath that the matters and things contained in the foregoing supplemental bill of complaint are true as therein stated.

W. H. WHITE.

Sworn to and subscribed before me this 19th day of May, 1920.

H. R. LOWERY,

(Seal) Notary Public in and for Supervisors District No. 2 Harrison County, State of Mississippi.

My Commission expires October 25th, 1920.

(Endorsements)

No. 5552

Chancery Court, Harrison County

L. N. Dantzler Lumber Co.

vs.

T. & P. Ry. Co., et al.

Sup. Bill

Filed May 20th, 1920.
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

White & Ford,
for Complainant.

156 **"SUMMONS TO DEFENDANT THE TEXAS & PACIFIC RAILWAY COMPANY AND PROOF OF PUBLICATION"**

Chancery Summons

No. 5552

The State of Mississippi

To the Texas and Pacific Railway Company:

You are commanded to appear before the Chancery Court of the County of Harrison, at the Court House thereof, in the City of Gulfport, in the State of Mississippi, on the Third Monday of June, A. D. 1920, to defend the suit in the said Court of L. N. Dantzler Lumber Company, complainant, wherein you are defendant.

This 20th day of May, A. D. 1920.

"Seal"

EUSTIS McMANUS,
Clerk.
By CHAS. HEWES, D. C.

The State of Mississippi,
County of Harrison.

Before me, the undersigned, a Notary Public, of Harrison County, Mississippi, personally appeared W. G. Wilkes, who, being by me first duly sworn, did dispose and say that he is the [Supeintendent] of the Gulfport Daily Herald, a newspaper printed and published in the City of Gulfport, in Harrison County, Mississippi, and that publication of the notice, a copy of which is hereto attached, has been made in said paper for the space of three weeks in the following numbers and on the following dates of such paper, viz:—

Volume xxii No. 238 dated 21 day of May, 1920
Volume xxii No. 244 dated 28 day of " 1920

Volume xxii No. 250 dated 4 day of June, 1920

	Volume	No.	dated	day of	191
157	Volume	No.	dated	day of	191

W. G. WILKES,
Superintendent.

Sworn to and subscribed before me this the 19th day of June, A. D. 1920.

(Seal) ROBT. L. MURPHY,

Notary Public Dist # 2. Harrison County, Mississippi.

(Endorsements)

5552

L. N. Dantzler Lbr. Co.

Vs.

T. & P. Ry. Co.

Proof of Pub.

Filed June 21, 1920
Eustis McManus,
Clerk.

158 State of Mississippi,
County of Harrison.

In the Chancery Court

No. 5552

To the Sheriff of Hinds County—Greeting:-

You are hereby commanded to summon The Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company, defendants if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1920, on the first day of said term, then and there to plead, answer or demur to the Supplemental Bill of Complaint filed in said Court by the L. N. Dantzler Lumber Company, complainant,

against the Texas and Pacific Railway Company, et al., defendants, and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 20th day of May, A. D. 1920.

(Seal)

EUSTIS McMANUS,
Clerk Chancery Court, Harrison County, Miss.
By CHAS. HEWES,
D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi
L. N. Dantzler Lumber Co.
Complainant

vs.

The Texas & Pacific Railway
Company et al. defendants

Summons
Issued May 20th, 1920

Returnable Third Monday in
June, A. D. 1920

Returned and filed this 24
day of May, A. D. 1920
Eustis McManus, Clerk

Executed personally on the Illinois Central Railroad Co., by delivering a true copy of the within writ to Homer Hill its Cashier at Jackson, Miss. This 22 day of May, 1920.

L. B. Williams,
Sheriff.

By J. D. Smith,
Deputy Sheriff.

Executed personally on the Yazoo & Mississippi Valley Railroad Co., by delivering a true copy of the within writ to Homer Hill its Cashier at Jackson, Miss. This 22 day of May, 1920.

L. B. Williams,
Sheriff.

By J. D. Smith,
Deputy Sheriff.

159 State of Mississippi,
County of Harrison.

In the Chancery Court

No. 5552

To the Sheriff of Lauderdale County—Greeting:-

You are hereby commanded to summon The Mobile and Ohio Railroad Company, defendant, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1920, on the first day of said term, then and there to plead, answer or demur to the Supplemental bill of complaint filed in said Court by the L. N. Dantzler Lumber Company, complainant, against the Texas and Pacific Railway Company, et [als.,] defendants, and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 20th day of May, A. D. 1920.

(Seal) EUSTIS McMANUS,
Clerk Chancery Court, Harrison County, Miss.

By CHAS. HEWES,
D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi

L. N. Dantzler Lumber Company
Complainant

vs.

The Texas & Pacific Railway Company
et al., defendants

Summons
Issued May 20th, 1920
Returnable Third Monday in
June, A. D. 1920

Returned and filed this 24
day of May, A. D. 1920
Eustis McManus, Clerk

Recd. in office May 22, 1920.
Jno. M. Martin,
Shff.

I have this day executed the within writ personally on the Mobile and Ohio Railroad Company, by delivering to O. L. McKay, Agent of said Railroad Company at Meridian, Miss., a true copy of this writ. This May 22, 1920.

Jno. M. Martin,
Shff.

By J. A. Cody,
Spcl. D. S.

I hereby specially deputise J. A. Cody to execute and return the within writ. This May 22, 1920.

Jno. M. Martin,
Shff.

160 State of Mississippi,
County of Harrison.

In the Chancery Court.

No. 5552

To the Sheriff of Harrison County—Greeting:-

You are hereby commanded to summon The Louisville and Nashville Railroad Company and the Gulf and Ship Island Railroad Company, defendants, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1920, on the first day of said term, then and there to plead, answer or demur to the Supplemental bill of complaint filed in said Court by the L. N. Dantzler Lumber Company, complainant, against the Texas and Pacific Railway Company, et al., defendants and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 20th day of May, A. D. 1920.

EUSTIS McMANUS,
(Seal) Clerk Chancery Court, Harrison County, Miss.
By CHAS. HEWES, D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi

L. N. Dantzler Lumber Company, Complainant

vs.

The Texas & Pacific Railway Company et al., defendants

Summons

Issued May 20th, 1920

Returnable Third Monday in June, A. D. 1920

Returned and filed this 26 day of May, A. D. 1920.

Eustis McManus, Clerk.

By ....., D. C.

Exe. $3.00
E&R .50

$3.50

Received this writ in my office this 20th day of May, 1920.

Jos. W. Havens, Sheriff.
By C. W. Fulmer, D. S.

I have this day executed this writ personally, by delivering to the within named Louisville and Nashville Railroad Company by delivering to H. B. Nunn, agent for the Louisville and Nashville Railroad Co. a true copy thereof. Further executed this writ personally on the Gulf & Ship Island Railroad Company by delivering to W. T. Stewart, President of the Gulf and Ship Island Railroad Company a true copy thereof.

This 21st day of May, A. D. 1920.

Jos. W. Havens, Sheriff.
By D. H. King, D. S.

161 State of Mississippi,
County of Harrison.

In the Chancery Court.

No. 5552

To the Sheriff of Warren County—Greeting:-

You are hereby commanded to summon The Vicksburg, Shreveport and Pacific Railway Company and The Alabama and Vicksburg Railway Company, defendants, if to be found in said county, to be and appear before the Chancery Court in and for the County of Harrison, State of Mississippi, at a term to be holden at the Court House of said County in the City of Gulfport on the Third Monday in June, A. D. 1920, one the first day of said term, then and there to plead, answer or demur to the Supplemental Bill of complaint filed in said Court by the L. N. Dantzler Lumber Company, complainant, against the Texas and Pacific Railway Company, et al. defendants and further to do and suffer such things as shall be considered and ordered by the Court in the premises, and have you then and there this summons with your return endorsed thereon.

Given under my hand and official seal, and issued on this the 20th day of May, A. D. 1920.

EUSTIS McMANUS,
(Seal) Clerk Chancery Court, Harrison County, Miss.
By CHAS. HEWES, D. C.

(Endorsements)

No. 5552

Chancery Court

Harrison County, Mississippi

L. N. Dantzler Lumber Company, Complainant

vs.

The Texas & Pacific Railway Company et al., defendants

Summons

Issued May 20th, 1920

Returnable Third Monday in June, A. D. 1920

Returned and filed this 28 day of May, A. D. 1920

Eustis McManus, Clerk
By ....., D. C.

Received this writ in my office this 22nd day of May, 1920.

B. H. Shannon, Sheriff
By W. T. Shannon, D. S.

I have this day executed this writ personally, by delivering to the within named The Vicksburg, Shreveport & Pacific Railway Co. and The Alabama & Vicksburg Railway Co., Austin King, their agent at Vicksburg a true copy thereof.

This 24th day of May, A. D. 1920.

B. H. Shannon, Sheriff
By W. T. Shannon, D. S.

162 **"MOTION OF GARNISHEE, ILLINOIS CENTRAL RAILROAD COMPANY, FOR TIME TO PLEAD."**

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas and Pacific Ry. Co., et al.

Comes the garnishee, I. C. R. R. Co., and moves the Court for sixty days to answer the supplemental bill of complaint in this cause.

WELLS, MAY and SANDERS,
For motion.

(Endorsements)

No. 5552

Dantzler

V.

T. & P. Ry. Co.

Motion of I. C. R. R. for time to plead.

Filed June 14th, 1920
Eustis McManus, Clerk.

Entered Motion Docket No. 14 page 73

163 **"ORDER SUSTAINING MOTION OF GARNISHEE, ILLINOIS CENTRAL RAILROAD COMPANY, FOR TIME TO PLEAD."**

State of Mississippi,
Harrison County.

In the Chancery Court To the June term 1920.

L. N. Dantzler Lumber Company, Complainant,

v.

Texas & Pacific Railroad Company, et al., Defendants.

Order.

By consent the garnishee defendant, The Illinois Central Railroad Company, is given sixty days in which to answer the bill of complaint.

Ordered, adjudged and decreed, this the 9th day of June, 1920.

D. M. WATKINS,
Chancellor.

O. K.: WELLS, MAY & SANDERS,
Attys. for I. C. R. R.

(Endorsements)

L. N. Dantzler Lbr. Co.

vs.

Texas & Pacific Ry. Co. et al.

Order allowing I. C. R. R. 60 days to plead.

Filed June 21, 1920.
Eustis McManus, Clerk.
Min. 18, page 311.

164 **"ANSWER TO GARNISHEE, GULF & SHIP ISLAND RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT."**

State of Mississippi,
County of Harrison.

In the Chancery Court June term 1920.

No. 5552

L. N. Dantzler Lumber Company, Complainant,

vs.

Texas & Pacific Railroad Company, et al., Defendants.

To the Honorable Chancery Court:

The Defendant Gulf and Ship Island Railroad Company, answering the supplemental bill of complaint of the L. N. Dantzler Lumber Company, says:

That at the time of the service of the writ of garnishment prayed for in said supplemental bill and continuously since said time until the time of filing this answer, the garnishee Gulf and Ship Island Railroad Company was not and is not now indebted in any sum whatever to the Texas and Pacific Railway Company, but that, on the contrary, said Texas and Pacific Railway Company is indebted to this garnishee in the sum of One Hundred forty nine dollars and twenty four cents ($149.24).

Wherefore the garnishee Gulf and Ship Island Railroad Company begs to be discharged from further liability herein.

GULF AND SHIP ISL[illegible] RAILROAD COMPANY,
[illegible]er B. E. EATON,
Defendant.

B. E. EATON, Solicitor.

State of Mississippi,
County of Harrison,
City of Gulfport.

165 Before me, the undersigned authority in and for the aforesaid city county and state personally appeared B. E. Eaton, who, as attorney for the garnishee Gulf and Ship Island Railroad Company makes oath that the matters and facts set forth in the foregoing answer are true and correct as therein stated, and in accordance with the books and records of the garnishee railroad company.

B. E. EATON,
Affiant.

Sworn to and subscribed before me, this the 18th day of June, 1920.

M. H. FEEHAN,
Notary Public.

(Seal)

(Endorsements)

No. 5552

Chancery Court, Harrison County.

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co., et al.

Answer of Gulf & Ship Island Railroad Company to Supplemental Bill.

Filed June 19th, 1920.
Eustis McManus, Clerk,

By Chas. Hewes, D. C.
B. E. Eaton,
Solicitor for defendant.

166 **"ANSWER OF DEFENDANT, VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT.**

No. 5552

In the Chancery Court of Harrison County, Mississippi.
June term, A. D. 1920.

L. N. Dantzler Lumber Company, Complainant,

vs.

The Texas & Pacific Railway Company, et al. Defendants.

Answer of the defendant, Vicksburg Shreveport & Pacific Railway Company, to the Supplemental Bill of Complaint.

This defendant saving and reserving unto itself all and all manner of benefit and advantages that might or could be taken by way of exceptions or otherwise, to the divers errors, uncertainties and imperfections in the supplemental bill of complaint, and in the original bill of complaint, contained, doth answer the said supplemental bill, or so much and such parts thereof as this defendant is advised it is necessary or proper to answer, and answering it says:

First: This defendant reiterates each and every averment of its answer heretofore filed in this cause to the original bill as fully as if its said original answer were herein repeated in the very words of said former answer.

Second: Except as hereinafter stated, this defendant was not indebted to the defendant The Texas & Pacific Railway Company when served with the summons to answer said supplemental bill of complaint; and this defendant has not been indebted to said defendant, the Texas & Pacific Railway Company at any time since the service of said summons on it, and is not now indebted to said defendant,

167 Texas & Pacific Railway Company in any sum whatever.

Third: Except as hereinafter stated, this defendant, Vicksburg, Shreveport & Pacific Railway Company at the time of

the service on it of said summons did not have in its possession or under its control any of the property or effects of the said Texas & Pacific Railway Company, and this defendant, Vicksburg, Shreveport & Pacific Railway Company has not had in its possession or under its control any of the property or effects of said Texas & Pacific Railway Company at any time since the service on it of said summons, and now has in its possession or under its control none of the property or effects of said Texas & Pacific Railway Company.

Fourth: Except as hereinafter stated, this defendant Vicksburg, Shreveport & Pacific Railway Company did not, when served with said summons, know of any person who was indebted to said Texas & Pacific Railway Company or who had in his possession or under his control property or effects of said Texas & Pacific Railway Company. And this defendant has not at any time since the service on it of said summons had knowledge, nor has it now knowledge of any person indebted to said Texas & Pacific Railway Company in his hands or under his control.

Fifth: This defendant, when served with said summons in this cause was and at all times since has been indebted to the defendant, Texas & Pacific Railway Company and is now indebted to it in the sum of ($2,439.03) Two Thousand, Four Hundred, Thirty nine 03/100 dollars, but in no greater sum,

Sixth: This defendant, when served with said summons in this cause had, and now has, in its possession and under its control (32) Thirty two freight cars of the property and effects of the said Texas & Pacific Railway Company,
168 but has in its possession or under its control no other property or effects whatever of the said Texas & Pacific Railway Company; had none other when served with said summons or at any time since. This defendant is but poorly advised touching the value of said cars, but presumes they are of the average value of not less than ($300.00) Three hundred dollars per car.

Seventh: This defendant is advised that the Alabama & Vicksburg Railway Company is indebted to and has property or effects of the Texas & Pacific Railway Company in its possession and under its control as shown by the answer

in this case of the said Alabama & Vicksburg Railway Company.

Now having fully answered, this defendant prays to be hence dismissed, with a reasonable allowance in money for answering herein and that it be hence discharged and awarded its costs in this behalf expended. And as in duty bound this defendant will ever pray.

VICKSBURG, SHREVEPORT & PACIFIC
RAILWAY COMPANY,
By R. H. & J. H. THOMPSON,
Its solicitors.

June 19, 1920.

(Endorsements)

No. 5552

Harrison County, Mississippi.

Chancery Court.

L. N. Dantzler Lumber Company

v.

Texas & Pacific Railway Company et al.

Answer of Vicksburg, Shreveport & Pacific
Railway Company
169 To Supplemental Bill.

Filed June 19, 1920.
Eustis McManus, Clerk.

R. H. & J. H. Thompson,
Attorneys at Law,
Jackson, Mississippi.

170 **"MOTION OF GARNISHEE, MOBILE AND OHIO RAILROAD COMPANY, FOR TIME TO ANSWER SUPPLEMENTAL BILL OF COMPLAINT."**

No. 5552

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Railroad Company, Mobile and Ohio Railroad Company, Garnishee.

Motion of Garnishee for time in which to answer.

Now comes the Mobile and Ohio Railroad Company, a garnishee in the foregoing numbered and entitled cause by its attorneys, and moves the Court to grant it ten days additional time in which to file its answer as garnishee in said cause; the said answer to be filed as of the return day of the writ served upon said garnishee.

McDONALD & MARSHALL,
Attorneys for Motion.

(Endorsements)

No. 5552

Dantzler Lumber Company

vs.

T. & P. Railroad Company

Motion of Garnishee Mobile & Ohio Railroad Company

Filed June 21, 1920.

Eustis McManus, Clerk.
By Chas. Hewes, D. C.

Sustained.
M D 14 p 124

171 **"MOTION FOR DECREE PRO CONFESSO AGAINST DEFENDANT, TEXAS & PACIFIC RAILWAY COMPANY."**

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas and Pacific Ry. Co., et al.

Comes the complainant and moves the court to grant a decree pro confesso against the defendant Texas and Pacific Ry. Co., for failure to answer the supplemental bill of complaint, said defendant having been duly summoned as required by law and failing to plead, answer or demur as required by law.

WHITE & FORD,
For complainant.

(Endorsements)

No. 5552

L. N. Dantzler Lbr. Co.

vs.

T. & P. Ry. Co. et al.

Motion for decree pro confesso

Filed 6/21, 1920.
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

M D 14 p 126
White & Ford, for motion.

172 **"DECREE PRO CONFESSO AGAINST DEFENDANT, TEXAS & PACIFIC RAILWAY COMPANY."**

No. 5552

L. N. Dantzler Lumber Co.

v.

Texas & Pacific Ry. Co. et al.

There coming on to be heard the motion of the complainant for a decree pro confesso against the defendant Texas & Pacific Ry. Co., for failure to answer the supplemental bill as required by law, and it appearing to the Court that the defendant, Texas & Pacific Ry. Co., has been duly and legally served with summons as required by law but has failed to plead, answer or demur the allegations of said bill be and they are hereby taken as confessed by said defendant.

Ordered, adjudged and decreed this 23rd day of June, 1920.

D. M. WATKINS,
Chancellor.

(Endorsements)

5552

L. N. Dantzler Lbr. Co.

vs.

T. & P. Ry. Co.

Decree pro confesso against T. & P. Ry. Co.

Filed June 23, 1920.
Eustis McManus, Clerk.

Recorded
Min. 18, page 349.

173 **"ANSWER OF GARNISHEE, LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT."**

State of Mississippi,
County of Harrison.

Chancery Court

No. 5552

L. N. Dantzler Lumber Company, Complainant

vs.

The Louisville & Nashville Railroad Company, et als. Defendants.

Comes the Louisville & Nashville Railroad Company by and through, A. J. Pharr, its comptroller and answering the supplemental bill filed in the above entitled cause respectfully shows unto the Court as follows:

1st. That the Louisville & Nashville Railroad Company was not indebted to the Texas & Pacific Railway Company on the 20th day of May, 1920, nor has it at any time since been indebted to the Texas & Pacific Railway Company.

2nd. That the Louisville & Nashville Railroad Company has no effects of the Texas & Pacific Railway Company in its possession on the 20th day of May, 1920, nor has it since said date, had in its possession, or under its control any effects of the said Texas & Pacific Railway Company.

3rd. That the Louisville & Nashville Railroad Company nor its agent making this affidavit has no knowledge or belief as to any other person being indebted to the Texas & Pacific Railway Company.

4th. That the Louisville & Nashville Railroad Company nor its agent making this answer has any knowledge of or belief as to any other person or corporation, which has
174 effects of the said Texas & Pacific Railway Company in his or its possession or under his or its control.

Wherefore, the Louisville & Nashville Railroad having made a full and complete answer to the Plaintiff's supple-

mental bill prays that this Honorable Court will hence forth dismiss it with its reasonable cost on this behalf incurred.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By A. J. PHARR, Comptroller.

State of Kentucky,
Jefferson County.

Personally appeared before me, C. W. Shaft, a Notary Public, in and for said State and County, A. J. Pharr, who upon oath deposes and says that he is comptroller of the Louisville & Nashville Railroad Company, and as such officer is duly authorized to make this answer, and has knowledge of the facts set out in said answer and that the facts as set out in said answer are true.

A. J. PHARR.

Subscribed and sworn to before me, this 21st day of June, 1920.

C. W. SHAFT,
(Seal) Notary Public, Jefferson County, Ky.

My commission expires July 6, 1922.

(Endorsements)

State of Mississippi, County of Harrison

No. 5552

Chancery Court

L. N. Dantzler Lumber Company, Complainant

vs.

Louisville & Nashville Railroad Company, et al., Defendant.

Comptroller's answer to Supplemental bill.

175 Filed June 23rd, 1920.
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

Smiths, Young & Leigh,
Attys., for defendant.

176 **"ANSWER OF GARNESHEE, MOBILE & OHIO RAILROAD COMPANY TO SUPPLEMENTAL BILL OF COMPLAINT."**

State of Mississippi,
Harrison County.

In the Chancery Court said County and State,

June term, 1920.

No. 5552

L. N. Dantzler Lumber Co., Complainant,

Versus

Texas & Pacific Railway Company, et al. Respondents.
Answer of Garnishee, Mobile & Ohio R. R. Co.

Now comes the garnishee, Mobile and Ohio Railroad Company, by its attorneys, in the foregoing numbered and entitled cause, and in answer to the writ of garnishment served upon it in said cause, answering says:

First. That at the time of the service of said writ of garnishment upon it, and at the time of the service of the said supplemental writ of garnishment in it in said cause, it was not indebted to the said respondent, Texas and Pacific Railway Company; and since the service of said writs of garnishment upon it, to the present time, it has not been indebted to said respondent in said cause.

Second. That at the time, and continuously since the time, of the service of said writs of garnishment upon it, said garnishee has not had in its possession or under its control any effects of said respondent, Texas and Pacific Railway Company.

Third. Said garnishee does not know or believe that any other person is indebted to said respondent, Texas and Pacific Railway Company.

Fourth. Said garnishee does not know or believe that any other person has effects of said respondent, Texas and

177 Pacific Railway Company, in his possession or under his control.

And having so answered, said garnishee, Mobile and Ohio Railroad Company, asks to be herefrom discharged with its costs, as by law provided.

McDONALD & MARSHALL,
Attorneys for Mobile and Ohio Railroad Company, Garnishee.

State of Mississippi, }
County of Harrison. }

Before me, the [undersigbed] authority in and for said county and state, personally appeared Carl Marshall, an attorney of record for the garnishee, Mobile and Ohio Railroad Company, in the foregoing cause, who being duly sworn, makes affidavit, upon information and belief, that the allegations of the foregoing answer of said garnishee are true and correct as therein set forth.

CARL MARSHALL.

Sworn to and subscribed before me, this 30th day of June, 1920.

(Seal)

EUSTIS McMANUS, Clk.
ROY GLENNAN, D. C.

178 (Endorsements)

5552

L. N. Dantzler Lbr. Co.

vs.

T. & P. Ry. Co., et al.

Answer of Mobile and Ohio Railroad Company, Garnishee.
Filed June 30th, 1920

Eustis McManus, Clerk.
By Chas. Hewes, D. C.
McDonald & Marshall, Attys. for Garnishee.

179 **"ANSWER OF GARNISHEE, ILLINOIS CENTRAL RAILROAD COMPANY"**

In the Chancery Court of Harrison County, Mississippi.

To the June Term, 1920.

L. N. Dantzler Lumber Company, a corporation, Complainant,

vs.

The Texas and Pacific et al., Illinois Central Railroad Company, Garnishee.

Answer of the Illinois Central Railroad Company, Garnishee.

To the Honorable Chancery Court of said County:

The separate answer of the Illinois [Centrail] Railroad Company summoned as garnishee herein, with respect shows to the Court as follows:-

That at the time of the service of the summons upon it herein this defendant did not have in its hands any funds of the Texas and Pacific Railway Company and was not indebted to the said Texas and Pacific Railway Company in any sum whatsoever, and this defendant further answering says, that it has not had in its hands since the service of summons herein, and has not now in its hands any funds belonging to the defendant, the Texas and Pacific Railway Company and has not been indebted to the said principal defendant since the service of process herein in any sum whatsoever.

On the other [hands], this defendant will show that at the time of the service of the summons on this defendant, the Receiver of the Texas and Pacific Railway Company (said principal defendant being in the hands of a receiver) was indebted to this garnishee, defendant, in a large sum of money in excess of the complainant's demand against the Texas and Pacific Railway Company.

180 And now having fully answered, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
Garnishee,
By WELLS, MAY & SANDERS, Attorneys.

State of Mississippi,
Hinds County.

This day personally appeared before the undersigned authority in and for said county and state, J. O. S. Sanders, one of the [attroeneys] for the garnishee defendant, the Illinois Central Railroad Company, who being by me first duly sworn, on his oath says that the matters and things set forth in the foregoing answer are true according to his best knowledge, information and belief, and he is authorized to make this affidavit on behalf of the said garnishee defendant, from whom the affiant says he obtained the information set forth in said answer.

J. O. S. SANDERS.

Sworn to and subscribed before me this the 10 day of July, 1920.

(Seal) F. M. WEST, Notary Public.

(Endorsements)

No. 5552

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Ry. Co., et al.

Separate Answer of I. C. R. R. Co.

Filed Aug. 2, 1920.
Eustis McManus, Clerk.

In the Chancery Court of Harrison County, Mississippi.
Wells May & Sanders, Attorneys, Jackson, Miss.

181 **"ANSWER OF GARNISHEE, YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY"**

In the Chancery Court of Harrison County, Mississippi,

To the June Term, 1920.

L. N. Dantzler Lumber Company, a corporation, Complainant,

vs.

The Texas and Pacific Railway Company et al., Yazoo and Mississippi Valley Railroad Company, Garnishee.

Answer of the Yazoo and Mississippi Valley R. R. Co., Garnishee.

To the Honorable Chancery Court of said County:-

The Yazoo and Mississippi Valley Railroad Company, summoned as garnishee herein, for answer to the bill of [complainant], with respect shows to the Court that this defendant is informed that the Texas and Pacific Railway Company was placed in the hands of a Receiver by an order of the United States District Court for the Western Division of the State of Louisiana, October 28, 1916, and has been in the hands of such receiver at all times since said last named date down to the present time.

Further answering, this defendant says that at the time of the service of the process on it herein this defendant was not indebted to the Texas and Pacific Railway Company in any sum whatsoever and had in its hands no funds belonging to the Texas and Pacific Railway Company and has not been and was not indebted to the Texas and Pacific Railway Company nor had in its hands funds of the Texas and Pacific Railway Company at any time since the service of process herein.

182 Defendant further answering, with respect shows that on June 2, 1920, and subsequent to the service of summons upon it, this defendant was indebted to the said Receiver of the said Texas and Pacific Railway Com-

pany in the sum of to-wit:- $1169.56, which indebtedness is claimed by the said Receiver as property belonging to the said receiver.

And now having fully answered this defendant prays to be dismissed with its reasonable costs.

YAZOO AND MISSISSIPPI VALLEY R. R. CO.,
Garnishee,
By WELLS, MAY & SANDERS,
Attorneys.

State of Mississippi,
Hinds County.

This day personally appeared before the undersigned authority in and for said county and state, J. O. S. Sanders, one of the attorneys for the garnishee defendant, The Yazoo and Mississippi Valley Railroad Company, who being by me first duly sworn, on his oath says that the matters and things set forth in the foregoing answer are true according to his best knowledge, information and belief, and he is authorized to make this affidavit on behalf of the said garnishee defendant, from whom the affiant says he obtained the information set forth herein.

J. O. S. SANDERS.

Sworn to and subscribed before me this the 20 day of July, 1920.

(Seal) F. M. WEST, Notary Public.

(Endorsements)

No. 5552

L. N. Dantzler Lumber Company

vs.

Texas and Pacific Railway Co., et al.

183 Separate Answer of Y. & M. V. R. R.

Filed Aug. 2, 1920.
Eustis McManus, Clerk.

In the Chancery Court of Harrison County, Mississippi.
Wells, May & Sanders, Attorneys, Jackson, Miss.

184 **"ANSWER OF DEFENDANT, ALABAMA & VICKSBURG RAILWAY COMPANY"**

No. 5552

In the Chancery Court of Harrison County, Mississippi

June Term, A. D. 1920.

L. N. Dantzler Lumber Company, Complainant

v.

The Texas & Pacific Railway Company et al., Defendants.

Answer of the defendant, Alabama & Vicksburg Railway Company to the supplemental bill of complaint.

This defendant saving and reserving unto itself all and all manner of benefit and advantages that might or could be taken, by way of exceptions or otherwise, to the divers errors, uncertainties and imperfections in the supplemental bill of complaint, and in the original bill of complaint, contained, doth answer the said supplemental bill, or so much and such parts thereof as this defendant is advised it is necessary or proper to answer, and answering it says:

First: This defendant reiterates each and every averment of its answer heretofore filed in this cause to the original bill as fully as if its said original answer were herein repeated in the very words of said former answer.

Second: Except as hereinafter stated, this defendant was not indebted to the defendant the Texas & Pacific Railway Company when served with the summons to answer said supplemental bill of complaint; and this defendant has not been indebted to said defendant, the Texas & Pacific Railway Company at any time since the service of said summons on it, and is not now indebted to said defendant,

185 Texas & Pacific Railway Company in any sum whatever.

Third: Except as hereinafter stated, this defendant Alabama & Vicksburg Railway Company at the time of the

service on it of said summons did not have in its possession or under its control any of the property or effects of the said Texas & Pacific Railway Company; and this defendant Alabama & Vicksburg Railway Company has not had in its possession or under its control any of the property or effects of said Texas & Pacific Railway Company at any time since the service on it of said summons, and now has in its possession or under its control none of the property or effects of said Texas & Pacific Railway Company.

Fourth: Except as hereinafter stated, this defendant, Alabama & Vicksburg Railway Company did not, when served with said summons, know of any person who was indebted to said Texas & Pacific Railway Company or who had in his possession or under his control property or effects of said Texas & Pacific Railway Company. And this defendant has not at any time since the service on it of said summons had knowledge, nor has it now knowledge, of any person indebted to said Texas & Pacific Railway Company or who has property or effects of said Texas & Pacific Railway Company in his hands or under his control.

Fifth: This defendant, when served with said summons in this cause was and at all times since has been indebted to the defendant, Texas & Pacific Railway Company and is now indebted to it in the sum of ($1030.49) One Thousand, thirty and 49/100's dollars, but in no greater sum.

Sixth: This defendant, when served with said summons in this cause had, and now has, in its possession or under its control (25) twenty five freight cars of the property and effects of the said Texas & Pacific Railway Company
186 but has in its possession or under its control no other property or effects whatever of the said Texas & Pacific Railway Company; had none other when served with said summons or at any time since. This defendant is but poorly advised touching the value of said cars, but presumes they are of the average value of not less than $300.00) Three Hundred dollars per car.

Seventh: This defendant is advised that the Vicksburg Shreveport & Pacific Railway Company is indebted to and has property or effects of the Texas & Pacific Railway Company in its possession and under its control as shown by the

answer in this cause of the said Vicksburg, Shreveport & Pacific Railway Company.

Now, having fully answered, this defendant prays to be hence dismissed, with a reasonable allowance in money for answering herein and that it be hence discharged and awarded its costs in this behalf expended. And as in duty bound this defendant will ever pray.

ALABAMA & VICKSBURG RAILWAY COMPANY,
By R. H. & J. H. THOMPSON, Its Solicitors.

(Endorsements)

No. 5552

Harrison County, Mississippi, Chancery Court
L. N. Dantzler Lumber Company

v.

Texas Pacific Railway Company, et al.

Answer of Alabama & Vicksburg Ry. Company to the Supplemental bill.

Filed June 19, 1920.
Eustis McManus, Clerk.

R. H. & J. H. Thompson, Attorneys at law,
Jackson, Miss.

187 **"DECREE"**

No. 5552

L. N. Dantzler Lumber Co., Complainant

vs.

Texas and Pacific Railway Co., et al.

(June term 1920. June
(29th, 1920. Minute Bk
(18 page 380.)

This cause coming on to be heard on pleadings, decree pro confesso against the defendant Texas and Pacific Ry. Co. &

proof and answers of the garnishees Vicksburg, Shreveport and Pacific Ry. Co., Alabama and Vicksburg Ry. Co., and Mobile and Ohio Railroad Company, and it appearing to the Court that the defendant Texas and Pacific Ry. Co. is indebted unto the complainant in the principal sum of $5600.00 and interest in the sum of $952.00 or a total sum of $6552.00 and that no personal service of process has ever been had on said defendant Texas and Pacific Ry. Co., and it further appearing that said garnishees admit an indebtedness to said Texas and Pacific Ry. Co., in the sum of $2439.03 by the Vicksburg, Shreveport and Pacific Railway Company, the sum of $1030.49 by the Alabama and Vicksburg Railway Company and the sum of $3053.94 by the Mobile and Ohio Railroad Company, and that all of said sums or indebtedness should be subjected to the demand of the complainant against said Texas and Pacific Railway Company, which said sum of $6552.00 is admitted by the defendant Texas and Pacific Railway Co., to be due the said complainant by it, it is therefore ordered, adjudged and decreed that the sum of $2,439.03 in the hands of the garnishee Vicksburg, Shreveport and Pacific Ry. Co., the sum of $1030.49 in the hands of the garnishee Alabama and Vicksburg Railway Company and the sum of $3053.94 in the hands of the Mobile and Ohio Railroad Company be and the same is hereby subjected to the demand of the complainant against the defendant
188 Texas and Pacific Railway Company, for which a decree is here and now rendered against said garnishees, and they are hereby directed to pay the same into the Chancery Court of Harrison County within thirty days from this date to be disbursed in accordance with this decree.

It further appearing that the indebtedness admitted is insufficient to satisfy the claim of the complainant against said main defendant and the costs of this proceeding and it further appearing that the defendant Mobile and Ohio Railroad Company is contesting the right of complainant to subject the funds in its hands to satisfaction of its claim, which contention however the Court finds is not well taken, but that in order that the other garnishees, parties defendant herein who have taken time to answer may answer in this cause, jurisdiction of this cause is hereby retained for such action

on the answers of said remaining defendants as the court may deem proper at the next ensuing term of this Court.

Ordered, adjudged and decreed this 29th day of June, 1920.

D. M. WATKINS, Chancellor.

(Endorsements)

No. 5552

L. N. Dantzler Lumber Co.

vs.

Texas & Pacific Ry. Co., et al.

Decree

Filed June 29th, 1920.
Eustis McManus, Clerk.
By Chas. Hewes, D. C.

Recorded: Min. 18 page 380.

189 **BOND FOR APPEAL TO SUPREME COURT**

The State of Mississippi,
County of Harrison.

Know all men by these presents, that We, the Mobile & Ohio Railroad Company, a corporation, as principal, The United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto the L. N. Dantzler Lumber Company in the penal sum of $6,500.00, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, our representatives or assigns, jointly and severally, firmly by these presents. Signed with our hands, and the seal of said surety, and delivered upon this the 2nd day of September, A. D. 1920.

The condition of this obligation is, That whereas, a judgment was rendered by the Chancery Court of the County of Harrison in said State, on the 29th day of June, 1920, at the regular June Term, 1920, of said Court, against the said Mobile & Ohio Railroad Co., a corporation, principal obligor herein, and in favor of said L. N. Dantzler Lumber Co., obligee, for the sum of $3,052.94; Now if said Mobile

& Ohio Railroad Co., a corporation, principal obligor herein, and appellant from the rendition of said judgment, will satisfy the said judgment, and also such final judgment as may be made in said cause, and all costs, if the said judgment of the said Chancery Court be affirmed by the Supreme Court of the State of Mississippi, to which Court an appeal from said judgment of said Chancery Court is to be prosecuted, then this obligation shall be void; otherwise it shall remain in full force and virtue.

(Seal) MOBILE & OHIO RAILROAD CO.,
Principal Obligor,

By McDONALD & MARSHALL,
Its Attorneys of Record.

THE UNITED STATES FIDELITY & GUARANTY CO.,
By S. A. TOMLINSON,
Attorney in Fact.

The above and foregoing bond approved, this the nd day of September, 1920.

EUSTIS McMANUS,
Chancery Clerk.

By CHAS. HEWES,
D. C.

(Endorsements)

No. 5552

L. N. Danztler Lbr. Co.

v.

T. & P. Ry. Co. et al.
Bond of M. & O. R. R. Co.
for Appeal to
Sup. Court

Filed Sept. 2nd, 1920
Eustis McManus, Clk.
By Chas. Hewes, D. C.

190 **SUMMONS TO SUPREME COURT FROM CHANCERY COURT.**

The State of Mississippi:

To the Sheriff of Harrison County, Greeting:

You are Hereby Commanded to Summon L. N. Dantzler Lumber Company, Appellee, or White and Ford, Attorney in fact or of record, if to be found in your County, to appear before the Supreme Court of the State of Mississippi, at the Capitol, in the City of Jackson, in the County of Hinds, on the Second Monday of October, A. D. 1920, then and there to answer the appeal of The Mobile and Ohio Railroad Company, from a decree of the Chancery Court of the County of Harrison, in said State, rendered against said Appellant on the 29th day of June, A. D. 1920, in favor of said Appellee, in the matter pending in said Chancery Court, styled L. N. Dantzler Lumber Company vs. Texas & Pacific Railway Company, et al., No. 5552, for $3,052.94 and have you then and there this writ with your returns thereon.

Given under my hand and seal of the said Chancery Court, at my office in Gulfport, on this the 1st day of October, A. D. 1920.

EUSTIS McMANUS,
Clerk of Chancery Court.

(Seal)

By CHAS. HEWES,
D. C.

Sheriff's Returns:

I have this day executed the within writ personally by delivering to W. A. White, a member of the firm of White and Ford Attorneys of record for the within named L. N. Dantzler Lumber Company, Appellee, a true copy of this writ. This the 1st day of October, 1920.

JOS. W. HAVENS,
Sheriff.

By B. F. DUCKWORTH,
D. S.

(Endorsements)

Received in my office, this the 1st day of October, 1920.

Jos. W. Havens,
Sheriff.

By C. W. Fulmer,
D. S.

Executing	1.50
Ent. and Ret.	50
	2.00

191 **"CERTIFICATE"**

The State of Mississippi,
Harrison County.

I, Eustis McManus, Clerk of the Chancery Court in and for said County and State, do hereby certify that the above and foregoing 190 pages contain a full, true, correct and complete transcript of all Pleadings, Orders, Decrees, Evidence and Exhibits, the Original Appeal Bond and Summons to Supreme Court, the same being all of and the entire record in said Court of that certain cause in said Court styled L. N. Dantzler Lumber Company, [Company.] Versus Texas & Pacific Railway Company, et als., Defendants, and Numbered 5552 on the General Docket of said Court, which includes the Decree appealed from, as the same appear and remain on file and of record in my office.

Given under my hand and official seal of office, at Gulfport, Miss., this the 22nd day of January, A. D. 1921.

(Seal)

EUSTIS McMANUS,
Clerk.

Statement of Fees

To Eustis McManus, Clerk,

For Transcript Fee, Binding Fee, Certificate, etc., ...$69.50

To Jos. W. Havens, Sheriff,
For Executing summons and return..... 2,00

Which amounts HAVE NOT BEEN paid.

EUSTIS McMANUS,
Clerk.

Record endorsed as follows:

"No. 21,848.

Mobile & Ohio Railroad Company

v.

L. N. Dantzler Lumber Co.

Second District. Chancery Court. Harrison [Couhrt]

Filed February 23rd., 1921

W. J. Buck, Clerk
By W. J. Brown, D. C."

192 **ORDER SUBMITTING CAUSE.**

Minutes Supreme Court of Mississippi. March Term, 1921.

Monday, May 16th, 1921.

Mobile & Ohio Railroad Co.

No. 21,848 v.

L. N. Dantzler Lumber Co.

Submitted with leave to each side to file briefs within two weeks from this date.

193 **APPELLANTS' ASSIGNMENT OF ERRRORS.**

In the Supreme Court of the State of Mississippi.

Mobile and Ohio Railroad Company and John Barton Payne, Agent of the Director General of Railroads of the United States, Appellants,

Versus

L. N. Dantzler Lumber Company, Appellee.
No. 21,848.

Now come the Mobile and Ohio Railroad Company, a corporation, and John Barton Payne, Agent of the Director General of Railroads of the United States, appellants, by their attorney of record in the foregoing cause, and respectfully assign as material, vital, prejudicial, and reversible error, contrary to the laws and the Constitutions of the State of Mississippi and of the United States of America, committed in the trial of said cause in the Court below against, and to the prejudice of the appellants, the following, to-wit:

1. The Court erred in sustaining the motion of the appellee to strike from the files the pleading of the Mobile and Ohio Railroad Company, and the explanatory and amended answer of the Director General of Railroads of the United States. (Transcript of the Record, pages 148-150.)

2. The Court erred in rendering its final decree in
194 favor of the appellee and against the Mobile and Ohio Railroad Company, as garnishee in said cause; because the record shows that at the time of the alleged service of the writ of garnishment upon said Mobile and Ohio Railroad Company, the said Mobile and Ohio Railroad Company, garnishee, and said Texas and Pacific Railway Company, respondent in said cause, were completely divested of the management of their own business and affairs, and were being operated, and possessed, including all of their funds, and assets of whatsoever description, by the United States Government, under the provisions of the Act of Congress of the United States, approved on March 21st, 1918, and entitled "An Act to provide for the operation of transportation systems while under the Federal control, for the just compensation of their owners, and for other purposes";

whereas, Section 10 of said Act expressly forbids and renders void said writ of garnishment and any service thereof: Which United States Law, the appellant does hereby expressly plead and rely upon; and the violation of which law by entering judgment against said appellant, Mobile and Ohio Railroad Company, in said cause, in the lower Court, the said appellant does expressly assign as error as a deprivation of a right accorded the appellant by said Act of Congress of the United States.

3. And the appellant, John Barton Payne, in his official capacity as Agent of the Director General of Railroads of the United States, does hereby also especially appear and assign as error the violation of said Section 10 of the said Act of Congress of the United States, and of the Proclamation of the President of the United States, by the decree of the Court below rendered in said cause, condemning said alleged indebtedness of the said Mobile and Ohio Railroad
195 Company's transportation system to the said Texas and Pacific Railway Company's system, to a satisfaction of the said judgment in favor of the appellee and against said Texas and Pacific Railway Company; both of said Railway Companies, and all of their property and funds of whatsoever description, being then, at the time of the institution of said suit by the appellee, and at the time of the attempted service of said writ of garnishment, under the control, operation, and management, and in the conclusive possession of, the Director General of Railroads of the United States, and under, and by virtue of, the provisions of said Act of Congress; which said Act of Congress, in the tenth Section thereof, expressly forbids and renders void the said service of said writ of garnishment and said seizure of said indebtedness in this action: Which Act of Congress of the United States the said Agent of the Director General of Railroads of the United States does hereby expressly plead, as a Federal right, a violation of which said appellant does hereby assign as error committed to his prejudice in said cause in the trial Court.

4. The appellant, Mobile and Ohio Railroad Company, is by said final decree of the trial Court deprived of its property, rights, and privileges, without due process of law, and

contrary to the Constitution of the United States of America, which said appellant does hereby expressly rely upon and plead.

Respectfully submitted,

CARL MARSHALL,
CARL FOX,
Attorneys for Appellants.

196 **Certificate.**

I, Carl Marshall, one of the attorneys of record for the appellants in the foregoing numbered and entitled cause, do hereby certify that I did this day mail a true copy of the foregoing assignment of errors, by United States Mail, postage pre-paid, to Messrs. White and Ford, attorneys of record for the appellee in said cause, addressed to them at their offices in the city of Gulfport, Mississippi, in accordance with the rules of this Court.

Given under my hand, upon this, the twenty-eighth day of May, A. D. 1921.

CARL MARSHALL,
Attorney of Record for the Appellants.

197 **MOTION FOR SUBSTITUTION OF JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS THE AGENT PROVIDED UNDER SECTION 206 OF THE TRANSPORTATION ACT, 1920.**

In the Supreme Court of the State of Mississippi

No. 21,848

Mobile & Ohio Railroad Company and John Barton Payne, Director General of Railroads, as Agent of the United States, Appellants

versus

L. N. Dantzler Lumber Company, Appellee

[No] comes the defendant, Mobile & Ohio Railroad Company, and James C. Davis, Director General of Railroads, as

the Agent provided under Section 206 of the Transportation Act, 1920, and moves the Court to substitute James C. Davis, Director General of Railroads, as the Agent provided under Section 206 of the Transportation Act, 1920, instead of the Mobile & Ohio Railroad Company, and states the following grounds:

First: This suit is based on a cause of action arising out of the possession, use, or operation by the President of the United States of the railroad or system of transportation of the Mobile & Ohio Railroad Company.

Second: Section 206 of the Transportation Act, 1920, approved February 28, 1920, provides that suits of the above character pending at the termination of federal control may be prosecuted to final judgment, substituting the agent designated by the President of the United States.

Third: James C. Davis, Director General of Railroads,
198 has been designated by the President for the purpose of such suits under the provisions of Section 206 of the Transportation Act, 1920.

Respectfully submitted,

R. C. BECKETT,
Attorney for Mobile & Ohio Railroad Company and James C. Davis, Director General of Railroads, as the Agent provided under Section 206 of the Transportation Act, 1920.

I, R. C. Beckett, Attorney of record for the Appellants in the foregoing numbered and entitled cause, do hereby certify that I did this day mail a true copy of the foregoing motion by United States mail, first class postage prepaid, addressed to Messrs. White and Ford, Attorneys of record for the Appellee in said cause, at their offices in the City of Gulfport, Mississippi, in accordance with the rules of this Court.

Witness my signature this 11th day of June, 1921.

R. C. BECKETT.

(Endorsements)

21848

Mobile & Ohio R. R. Co.

v.

L. N. Dantzler Lbr. Co.

Motion of appellant to substitute Jas. C. Davis, Director Gen'l & Agent

Sustained
Filed June 13/1921.
W. J. Buck, Clerk.

199 **ORDER SUSTAINING MOTION TO SUBSTITUTE JAS. C. DAVIS, AGENT U. S.**

Minutes Supreme Court of Mississippi. March Term, 1921

Monday June 27th, 1921.

No. 21,848

Mobile & Ohio Railroad Co.

v.

L. N. Dantzler Lumber Co.

This cause coming on to be heard on the motion of appellant to substitute the name of James C. Davis, Director General of Railroads, Agent, instead of The Mobile & Ohio Railroad Company as appellant, and this court having sufficiently considered the same, doth order and adjudge that said motion be and the same is hereby sustained.

200 **JUDGMENT OF SUPREME COURT OF MISSISSIPPI.**

Minutes Supreme Court of Mississippi, March Term, 1921.
Monday, July 11th, 1921.
No. 21,848

James C. Davis, Director General, Agent, Mobile & Ohio Railroad Co.

v.

L. N. Dantzler Lumber Company.

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Harrison County, and this court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 29th day of June, 1920, be and the same is hereby reversed and this court proceeding now here to enter such decree as should have been entered in the court below, doth order, adjudge and decree that appellee do have and recover of James C. Davis, Director, General, Agent of the United States, the sum of Three Thousand and Fifty Two and 94/100 Dollars, the amount of the decree rendered in the court below as well as interest on said sum from June 29th, 1920, until paid at the rate of 6 per centum per annum, and that appellee do pay the costs of this appeal to be taxed, Etc. It is further ordered, adjudged and decreed that appellant, Mobile & Ohio Railroad Company, be and the same is hereby discharged and that it go hence without day.

201 In the Supreme Court of Mississippi.

No. 21,848.

James C. Davis, Director General and Agent, Mobile & Ohio Railroad Company,

v.

L. N. Dantzler Lumber Company.

Syllabus by the Court.

1. **Actions**—Suits Against Railroads While Under Federal Control—Garnishment of Director General Under Section 10 of the Federal Control Act of March 21, 1918 (U. S. Compiled Stats., Compact Ed., Sec. 3115¾ j, 40 Stat. at Large, p. 757, 762, Federal Statutes Annotated 1918, Sup. 757, 762.

The provision in the Federal Control Act of March 21, 1918, providing that, "Carriers while under Federal Control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law, . . Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law;" authorizes a suit against a carrier under government control for a cause of action arising before such control, and in such suit another carrier being operated under government control may be garnished and a judgment be rendered against it for a debt it owes the principal defendant, but no execution can be rendered on such judgment against the Director General or the Government, but the judgment plaintiff must proceed in accordance with the Transportation Act of 1920 for collection of such judgment. In such suit the different transportation systems being operated by the Government are treated as separate parties for the purposes of suit and accounting.

202 2. **Pleading**—Defenses May Not Be Made by a Garnishee for the Principal Defendant.

In a suit by attachment against a non-resident defendant, who has only been served by publication and who has entered no personal appearance, a garnishee in such suit may not

plead for the principal defendant any defense which is personal to the defendant: and this is true even though the garnishee is a carrier being operated by the United States Government under the Transportation Act of March 21, 1918, 40 Statute at Large, 451, Federal Stat. Ann. 1918 Supp. 757, 762, Comp. Stat., Sec. 3115¾ j.

3. **Appeal and Error**—Practice in the Supreme Court Entering Judgment Which Is Apparent on Record Should Be Entered—Section 4919, Code 1906, Section 3195, Hemingway's Code.

Under Section 4919, Code of 1906, Section 3195, Hemingway's Code, so providing the Supreme Court on reversal of a case may, where the record makes it apparent what judgment should have been rendered in the Court below, enter such judgment here. This should always be done, where there is no new fact to be determined, in furtherance of the policy of ending litigation.

203 In the Supreme Court of Mississippi.

No. 21,848.

James C. Davis, Director General, and Agent, Mobile & Ohio Railroad Company,

v.

L. N. Dantzler Lumber Company.

(6497)

In Banc

Ethridge, J.

The appellee filed suit against the Texas & Pacific Railway Company as defendant and various other Railroad Companies doing business and operating through the state of Mississippi as garnishees. Among the Railroad Companies so made defendants for the purpose of garnishments was the Mobile & Ohio Railroad Company. The suit grows out of an injury to a shipment of cattle from Ft. Worth, Texas, to a station in Harrison County, Mississippi, on the Gulf & Ship Island Railroad; said bill of lading evidencing said

shipment was dated October 10, 1917. During the time the cattle were in transit some of them died and others were injured, all of which it was alleged was the result of the negligence of the Texas & Pacific Railway Company. Suit was filed on March 25, 1918, in the Chancery Court of Harrison County where the complainant lived, and in the County to which said cattle were consigned; garnishments were issued the same day and served on the Mobile & Ohio Railroad Company the following day.

The Mobile & Ohio Railroad Company answered admitting certain indebtedness but set up that the moneys constituting said indebtedness came into its possession during the period in which the United States Government had taken over and was operating the railroads for war purposes, and challenged the jurisdiction of the Court to entertain jurisdiction so as to render judgment against it or to subject its funds to
204 the demands of the complainant.

The Court below dismissed the suit for want of jurisdiction; jurisdiction being acquired only by publication as to the Texas & Pacific Railway Company, and by service of writs of garnishments on the other Railroad Companies. From this judgment the complainant appealed to this Court, and on March 3, 1919, the judgment of the Court below was reversed and the cause remanded. A report of the case as it then stood appears in the case of L. N. Dantzler Lumber Company v. Texas & Pacific Railway Co. et al., 119 Miss. 328, 80 So. 770, 4 A. L. R. 1669, where a full statement of the case as it then existed is set out.

On the case being remanded a supplemental bill was filed and additional garnishments issued against the Railroad Companies doing business in the State of Mississippi, an additional garnishment being served on the Mobile & Ohio Railroad Company.

The Mobile & Ohio Railroad Company, as a corporation, answered the additional garnishment denying that it was indebted to the Texas & Pacific Railway Company, and denying that it had any property belonging to the Texas & Pacific Railway Company in its possession at the time of the service of the garnishment or since, and setting up that the original garnishment was not served upon any agent of the Mobile & Ohio Railroad Company, a corporation, but

that the process in the original suit was served on the agent of the Director General operating the Mobile & Ohio Railroad at said time, and that no service was had upon the Mobile & Ohio Railroad Company or any agent of it acting in its corporate capacity. It further set up in its answer that on the 27th of October, 1916, the Texas & Pacific Railway Company was placed in the hands of receivers at the suit of certain parties set forth, and that when receivers were appointed in the equity side of the District Court of the Western District of Louisiana, Monroe Division,
205 and the receivers were appointed for all property of every kind of the Texas & Pacific Railway Company, and that from said date until the 28th day of December, 1917, said railroad properties were operated by receivers and not by the Texas & Pacific Railway Company, and that on the 28th day of December, 1917, the United States Government took possession and control of the railroad properties owned by the Texas & Pacific Railway Company, along with the other transportation systems of the United States, and continuously operated said railroad properties to the exclusion both of the Texas & Pacific Railway Company and of the said receivers since said time. It was further alleged in the answer of garnishment that should any decree be rendered against the said Mobile & Ohio Railroad Company as a corporation for any sum of money, whatever respondent would be required to pay money that it did not owe and never owed and for which it never received any consideration or compensation, that it would be to deprive it of the equal protection of the law and would be a taking of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. It further answered that the President of the United States in taking over the property of the Mobile & Ohio Railroad Company, along with other transportation systems, under the Act of March 21, 1918, known as the Federal Control Act, and the proclamations and orders of the Director General made in pursuance of said Act of Congress, exempted the respondent from suit or judgment in this case.

The Director General filed an answer to the supplemental bill setting up that on the 26th day of December, 1917, the United States Government took control of the transportation

systems of the country including the Mobile & Ohio Railroad Company and the Texas & Pacific Railway Company.
206 That the President of the United States appointed a Director General to control and operate said railroads and that the summons in the original garnishment directed to the Sheriff of Lauderdale County, Mississippi, was served by said Sheriff on an agent of the Director General employed by the Director General in the operation of the Mobile & Ohio Railroad Company. That the Mobile & Ohio Railroad Company was not in possession or control of, and was not operating, its railroad known as the Mobile & Ohio Railroad in Mississippi or elsewhere, and had not been in such control since December 28, 1917, and that the agent of the Director General was not an agent in the employ of the Mobile & Ohio Railroad Company. It was further set forth in the said answer that the original answer herein was intended to be and was in fact the answer of the Director General of Railroads, and the indebtedness therein admitted to be due the Texas & Pacific Railway Company was an indebtedness due by the Director General to the Texas & Pacific Railway Company, and not an indebtedness due by the Mobile & Ohio Railroad Company, and that the employes who filed said answer were employes of the Director General and not under the control of the Mobile & Ohio Railroad Company as a corporation. It was further alleged that after this original answer was filed, in order to avoid the confusion which existed in the minds of people, and especially of lawyers and courts, the Director General issued General Order No. 50, afterwards amended by his General Order No. 50-A, providing that suits on causes of action arising out of the operation of railroads by the Director General and on contracts made by or on behalf of the Director General should be brought against the Director General of Railroads, and not against the Railroad Company. It was further set forth in said answer that the Texas & Pacific Railway Company was on October 27, 1916, placed in the hands of Receivers who continued to operate it until the railroad and transportation systems were taken over by the
207 United States Government on December 28, 1917. It was further set forth in the answer that since the service of the last process the Mobile & Ohio Railroad Com-

pany operated by the Director General was not indebted to the Texas & Pacific Railway Company and did not have any property of said Texas & Pacific Railway Company in its possession or under its control. It was further set forth that the suit against the Director General is a suit against the United States and that the United States can not be sued without its consent, and that the United States has not consented to be sued either in its own name or through this respondent in the manner and for the purposes for which the writ of garnishment was issued against the Mobile & Ohio Railroad Company.

On the former appeal the costs were adjudged against the Mobile & Ohio Railroad Company which it declined to pay and which are unpaid by it. The L. N. Dantzler Lumber Company was compelled to pay the costs in order to have the mandate issued to the Court below.

The last answer of the garnishee, the Mobile & Ohio Railroad Company, a corporation, was not filed by leave of Court nor was the original answer formally amended by leave of Court, and on motion of the complainant said answers were stricken from the files by the Court, and final judgment entered for the amount of money shown to be due the Texas & Pacific Railway Company in the original answer, from which judgment this appeal was prosecuted.

Since the record has reached here a motion was made by the appellant in the name of the Mobile & Ohio Railroad Company and in the name of the Director General to substitute James C. Davis, Director General of Railroads and Agent of the United States, under the Transportation
208 Act, as appellant in the case, which motion on a former day of this term of the court was sustained, and the record now makes the Director General, an agent of the United States Government, the defendant in the garnishment.

The original opinion (see L. N. Dantzler Lumber Co. v. Texas & Pacific Railway Company, et al., 119 Miss. 328, 80 So. 770, 4 A. L. R., 1669, supra), held that the garnishment could issue for the purpose of acquiring jurisdiction to adjudicate the rights between the complainant and the defendant and to render judgment against the Mobile & Ohio Railroad Company for the amount it was due the Texas

& Pacific Railway Company as shown in the answer. It was held that the Act of March 21, 1918, known as the Government Control Act, did not prevent the issuance of garnishment against a railroad company being operated by the Government. It was further held in the original opinion that the garnishee could not set up a defense for the principal defendant, and we think it can not set up now such defenses for the principal defendant. We think, furthermore, that the attempted defense that the Texas & Pacific Railway Company was being operated under a receivership at the time of the accrual of the cause of action can not be made in this case because the Act of March 21, 1918, provides that such suits originating before the Federal Control Act can be prosecuted in the same way as though the Government had not taken over the control of the transportation systems. The provision of the Act,—"Actions at law or suits in equity may be brought by and against such carriers and judgment rendered as now provided by law and in any action at law or suit in equity against the carrier no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government,"—carries with it the idea that such suits may be instituted against the carrier while under governmental control to the same extent and with the same effect as though the Government had not taken over said transportation systems so far as causes of action arising prior to Government control are concerned.

209

The United States Supreme Court in the case of Missouri Pacific Railroad Company and Walker D. Hines, Director General of Railroads v. H. A. F. Ault, —— U. S. ——, 65 L. Ed., ——, —— Sup. Court Rep. ——, decided June 1, 1921, has interpreted this Act in accordance with these views. In that case the Supreme Court said:

> "The plain purpose of the above provision was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the President except in so far as such rights or remedies might interfere with the needs of Federal operation. The provision

applies equally to cases where suits against the carrier companies were pending in the courts on December 28, 1917; to cases where the cause of action arose before that date and the suit against the company which was filed after it; and to cases where both cause of action and suit had arisen or might arise during federal operation. The Government was to operate the carriers, but the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers. The situation was analogous to that which would exist if there were a general receivership of each transportation system. Operation was to be continued as theretofore with the old personnel, subject to change by executive order. The courts were to go on entertaining suits and entering judgments under existing law, but the property in the hands of the President for war purposes was not to be disturbed. With that exception the substantial legal rights of persons having dealings
210 with the carriers were not to be affected by the change of control.

"This purpose Congress accomplished by providing that 'carriers while under federal control' should remain subject to all then existing laws and liabilities and that they might sue and be sued as theretofore. Here the term 'carriers' was used as it is understood in common speech; meaning the transportation systems as distinguished from the corporations owning or operating them. Congress had in Section 1 declared that such was its meaning. The President took over the physical properties, the transportation systems, and placed them under a single directing head; but he took them over as entities and they were always dealt with as such (Bull. No. 4, p. 113). Each system was required to file its own tariffs, General Order No. 7, Bull. 4, p. 151. Each was required to take an inventory of its material and supplies. General Order No. 10, id. p. 170. Each Federal treasurer was to deal with the finances of a single system; his bank account was to be designated '(Name of Railroad), Federal Account'.

General Order No. 37, id. p. 313. Each of 165 systems was named individually in the order promulgating the wage awards of the Railroad Wage Commission. General Order No. 27, id. p. 198, 200. And throughout the orders and circulars there are many such expressions as 'two or more railroads or boat lines under federal control'. See General Order No. 11, id. p. 170. It is this conception of a transportation system as an entity which dominates Section 10 of the Act. The systems are regarded much as ships are regarded in admiralty. They are dealt with as active responsible parties answerable for their own wrongs. But since levy and execution upon their property was precluded as
211 inconsistent with the Government's needs, the liability of the transportation system was to be enforced by allowing suit to be brought against whomever, as the party operating the same, was legally responsible under existing law, although it be the Government.

"Thus under Section 10, if the cause of action arose prior to Government control, suit might be instituted or continued to judgment against the company as though there had been no taking over by the Government, save for the immunity of the physical property from levy and the power of the President to regulate suits in the public interest as by fixing the venue, or the time for trial. If the cause of action arose while the Government was operating the system the 'carrier while under federal control' was nevertheless to be liable and suable. This means, as a matter of law, that the Government or its agency for operation could be sued, for under the existing law the legal person in control of the carrier was responsible for its acts. See Gracie v. Palmer, 8 Wheat. 605, 632-633. The title by which suit should be brought—the person who should be named as defendant—was not designated in the Act. In the absence of explicit direction, it was perhaps natural that those wishing to sue the carrier should have named the company as defendant when they sought to hold the Government liable. It doubtless seemed, as suggested in McNulta v. Lochridge, 141 U. S. 327, 331-332, that suit

should be brought against the transportation company 'by name 'in the hands of,' or 'in the possession of' a receiver,' or Director General. All doubt as to how suit should be brought was cleared away by General Order No. 50 which required that it be against the Director General by name."

Applying these principles to the case before us, we must conclude that the answer of the Director General in the Court below should have been treated by the Court as an application by the Director General to be substituted
212 as the defendant instead of the Mobile & Ohio Railroad Company and substitution should have been made at that time, but an application to substitute in this Court has been made and allowed, and as to the Director General it must be treated as though made by the Court below and the answer of the Director General be treated in this suit as embracing both the amended answer and the original answer, as the original answer was made by him and his agent in the name of the Mobile & Ohio Railroad Company, which was the only way it could be made at such time.

The above quotation from the United States Supreme Court in the Ault Case shows clearly that the Director General is to be treated as a Director General of each separate system of transportation, and that the separate transportation systems being operated by the Director General are separate parties within the meaning and purpose of the Federal Control Act construed by the Supreme Court. Therefore as the answer shows that the Mobile & Ohio Railroad Company's transportation system is a party indebted to the Texas & Pacific Railway Company as another party for the purpose of suits, the judgment of the Court below awarding judgment against the Mobile & Ohio Railroad Company is, in effect, in view of the substitution made, a judgment against the Director General of the Mobile & Ohio Railroad Company, and that the complainant is entitled to recover of the Director General of the Mobile & Ohio Railroad Company said sum. But that part of the order of the Court which directed the money to be paid into Court to be disbursed by the Court is unauthorized and unwarranted and will be

modified to that extent. See Section 4919, Code of 1906, Section 3195, Hemingway's Code.

The Director General can not be required to pay the money into Court, but the complainant will have to secure the money in a manner provided by the Federal Control Act. Section 206 of the Transportation Act of 1920, —— 213 United States Statutes at Large, ——.

The judgment against the Mobile & Ohio Railroad Company as a corporation is erroneous and its application to be discharged as the garnishee and defendant in the Court below should have been sustained, and the judgment of the Court as to the Mobile & Ohio Railroad Company, a corporation, will be reversed and judgment entered here discharging the Mobile & Ohio Railroad Company, a corporation, it not being shown that the complainant would or could contest the truth of its answer as to property or funds coming into its hands or under its control since March 1, 1920. The case above quoted from the United States Supreme Court is authority for the correctness of this view.

The judgment of the Court below will be reversed and a modified judgment against the Director General for the amount shown in the original answer will be entered in favor of the complainant, appellee here.

Reversed and modified judgment here.

(Endorsement)

21848

James C. Davis, Direc. Gen. & Agt. Mobile & Ohio R. R. Co.,

v.

L. N. Dantzler Lumber Co.

Filed July 11, 1921.
W. J. Buck, Clerk.
W. J. Brown, D. C.

6497

214 **SUGGESTION OF ERROR.**

In the Supreme Court of Mississippi.

No. 21848

James C. Davis, Director General and Agent, et al., Appellant,

vs.

L. N. Dantzler Lumber Company, Appellee.

The appellant, James C. Davis, Director General of Railroads and Agent of the United States of America, duly appointed under Section 206 of the Act of Congress, known as the Transportation Act of 1920, respectfully suggests errors in the decision of this case, rendered on the 11th instant, as follows:

I. The Court erred in directing that judgment be entered against James C. Davis, Director General and Agent, etc., for the amount shown in the original answer or any amount.

II. The Court erred in holding in substance that under the Act of Congress known as the Federal Control Act, for the purpose of suits and remedies or any other purpose, the Texas & Pacific Railway Company, the Receivers of the Texas & Pacific Railway, and the Director General of Railroads, operating the Texas & Pacific Railroad, were one and the same person, so that suits on causes of action against the Receivers could be brought against the Railway Company, and debts due the Director General could be condemned to payment of demands against the Receivers or against
215 the Texas & Pacific Railway Company.

III. The Court erred in holding that a debt (so-called) shown without dispute to be due to the Director General of Railroads operating the Texas & Pacific Railroad could, by [vitrue] of the Act of Congress known as the Federal Control Act, or any other statute, or for any other reason, be condemned to pay complainant's demand against the Texas & Pacific Railway Company.

IV. The Court erred in holding that Congress provided by its Act known as the Federal Control Act, or by any other

act, that persons having causes of action arising prior to Federal Control against a Railroad Company or against Receivers operating a Railroad Company, could, by attachment or garnishment, subject amounts due to the Director General operating the Railroad owned by said Railroad Company, or operated by said Receivers, to the payment of demands against such Railroad Company, or against such Receivers.

V. The Court erred in holding that the (so-called) debt, regardless of who the creditor may have been, could be subjected to the payment of a demand against the Texas & Pacific Railway Company, when it is conclusively established that the complainant had no right of action against the Texas & Pacific Railway Company.

VI. The Court erred in holding that the (so-called) debt, which, if it was a debt at all was a debt of the United States Government, was subject to garnishment by virtue of the Act of Congress known as the Federal Control Act, or otherwise.

216 We shall make this discussion brief. But, before commencing it, we desire to state the undisputed facts which are material to our discussion. This Court in its opinion on this second appeal said:

".....the answer of the Director General (must) be treated in this suit as embracing both the amended answer and the original answer, as the original answer was made by him and his agent in the name of the Mobile & Ohio Railroad Company, which was the only way it could be made at such time."

In the Director General's amended answer which the Court said must be considered as having been properly filed it was averred that on the 27th day of October, 1916, Receivers for the railroad and all other property of the Texas & Pacific Railway Company (the principal defendant in this suit) were appointed by a United States District Court of Louisiana; that from the date of their appointment to the 28th day of December, 1917, when the railroad was taken over by the United States Government, it was operated by the Receivers to the exclusion of its owner, the Texas & Pacific Railway Company, and thereafter by the United States Government to the exclusion of its owner, the Texas & Pacific Railway Company.

Let us distinguish between the Texas & Pacific Railroad, which is a physical property or system of transportation, and the Texas & Pacific Railway Company, a corporation which owned the physical property, the railroad. In the Court's opinion herein this distinction was not made, and without the distinction it is difficult to avoid confusion of thought. The Court spoke of the Mobile & Ohio Railroad Company and of the Texas & Pacific Railway Company
217 as systems of transportation under the control of the Director General. The Companies were not controlled in any degree by the Director General, and were wholly excluded from any connection with the operation of their properties by the Director General during Federal control. In Missouri Pacific R. R. Co. and Hines, Director General, etc., v. Ault, decided by the United States Supreme Court, June 1, 1921, it was said:

"The company is clearly not answerable in the present action if the ordinary principles of common-law liability are to be applied. The Railroad Administration established by the President in December, 1917, did not exercise its control through supervision of the owner-companies, but by means of a Director General, through 'one control, one administration, one power for the accomplishment of the one purpose, the complete possession by governmental authority to replace, for the period provided, the private ownership theretofore existing.' Northern P. R. Co. v. North Dakota, 250 U. S. 135, 148, 63 L. ed. 897, 902."

In order to avoid the confusion of thought arising out of designating a railroad or system of transportation by the name of the corporation owning it, the Director General required, during Federal Control, that the word "Company" be dropped from the stationery, books of account, and all other records of each transportation system controlled and operated by him—for example, the system of transportation owned by the Southern Railway Company was designated: "W. G. McAdoo, Director General of Railroads, Southern Railroad." The Mobile & Ohio Railroad Company's system of transportation, operated by him, was designated "W. G. McAdoo, Director General, Mobile & Ohio Railroad."

Therefore, in this argument, when we speak of the Texas & Pacific Railway Company or the Mobile and Ohio
218 Railroad Company we mean the corporations and not the railroads owned by them.

The Court below did not permit any proof to be taken upon the averments of the Director General's amended answer filed after this case was remanded on the first appeal, but since this court held on this appeal that the Director General's answer must be considered as embracing his amended answer, and considered it and rendered judgment here, all of its material averments must be taken as true. Otherwise, this Court would be in the position of holding that the Director General's amended answer was properly filed but that he was not entitled to establish its averments by evidence. Therefore, the following facts, in chronological order, are uncontroverted:

On the 27th day of October, 1916, the Texas & Pacific Railway Company was ousted of the possession of its railroad by Receivers of a Federal Court who thereafter operated the property until the Federal Government took it over. On the 10th day of October, 1917, the complainant shipped their cattle over the Texas & Pacific Railroad and certain connecting carriers, and since, on that date, the Texas & Pacific Railroad was not being operated by the Texas & Pacific Railway Company, but by the Receivers of the United States District Court, the contract of shipment was necessarily made with the Receivers and not with the Texas & Pacific Company. On the 28th day of December, 1917, the Federal Government took from the Receivers the possession and control of the Texas & Pacific Railroad (not the Texas & Pacific Railway Company) and thereafter operated it. On the same date the Federal Government took from the Mobile & Ohio Railroad Company the possession of its road and thereafter operated it. The Director General of Railroads operated both the Texas & Pa-
219 cific Railroad and the Mobile & Ohio Railroad, not through control of either of the Companies or of the Receivers of the Texas & Pacific, but directly by means of his own officers and agents. See quotation from the Ault case hereinabove.

Notwithstanding the fact that the Texas & Pacific Railway Company was not engaged in the operation of its railroad at the time complainant shipped its cattle, and notwithstanding the fact that complainant's contract was necessarily made with the Receivers, and its cause of action, if any, was against the Receivers and not against the Texas & Pacific Company, the Receivers were not sued, but the Company itself was made the principal defendant. This Court said that the Director General of Railroads, the defendant in attachment, could not set up any defense of the principal defendant to this suit, and we have no complaint to make of that position. We think, no doubt, that it is correct. But, leaving out of consideration for the present questions arising under the Federal Statutes or depending on Federal Control, the issue between the complainant and the Director General of Railroads was whether the Director General was indebted to the principal defendant, the Texas & Pacific Railway Company, and in Section 4 of his amended answer the Director General flatly denied that he was indebted to the principal defendant in any sum whatever, and averred that if there was any debt subject to garnishment which, but for the appointment of the Receivers, would have been due the Texas & Pacific Company it was due to the Receivers who had been operating the Texas & Pacific Company's property for about a year and five months prior to the service of the writ of garnishment. As we have shown hereinabove, this Court must either accept that statement as true, or the case must be remanded so that the Director General may have an opportunity of proving that he was not indebted to the principal defendant, the Texas
220 & Pacific Railway Company. In this connection the Court said:

"We think, therefore, that the attempted defense that the Texas & Pacific Railway Company was being operated under a receivership at the time of the accrual of the cause of action cannot be made in this case because the Act of March 21, 1918, provides that such suits originating before the Federal Control Act can be prosecuted in the same way as though the Government had not taken over the control of the transportation systems."

But if the Government had never taken over the control of the railroads a suit against the Texas & Pacific Railway Company could not have been maintained on a cause of action arising out of the operation of the railroad by the Receivers. If there had been no Federal control, condemnation of a debt due the Receivers in a suit against the Company in which the Receivers were not defendants would have been a deprivation of property without due process of law. The judgment in this case goes much further than merely to sustain a suit which might have been sustained in the absence of Federal control. The mere adversion to the law of receivership brings instantly to mind the total lack of identity between a corporation owning a railroad and the Receivers appointed by a court and officers of the court who possess and operate the road. A judgment obtained against the corporation may be filed in the court which appoints the Receivers as a claim against the Receivers, but its status is simply that of other claims
221 of the same class, and as a judgment is not binding upon the Receivers. If we assume, for the argument, that the complainant had a valid claim against the Texas & Pacific Railway Company, the complainant certainly would not be permitted to collect his claim in full by proceedings of this kind when other persons with similar claims must take their pro-rate share of the funds of the insolvent estate. Fortunate claimants finding opportunities of attaching property or debts of the Receivers in other states, as in this case, would collect their claims in full, while less fortunate persons with claims of the same class might collect only a small part of their demands. We advert to these results to illustrate the error. The right upon which we stand is the fundamental principle that no judgment can be rendered against a garnishee who is admittedly not indebted to the principal defendant.

If, as this Court holds, that was a debt in the true sense of the word, subject to attachment under the laws of Mississippi, a judgment requiring the Director General to pay it to the complainant to satisfy complainant's demands against the Texas & Pacific Railway Company could not be set up by the Director General as a defense in a suit by the

Receivers to collect the debt which is due to them, and not the Railway Company. It is true that the complainant had the same rights and remedies during Federal control which it had at the time the railroads were taken over by the President, except insofar as such rights or remedies might interfere with the needs of Federal operation. But, as construed by this Court, the Acts of Congress created a right to take the property of one person to pay the debts of another, which right never did exist.

222 What we have said so far deals with the law of attachment and garnishment under the general law and the Statutes of Mississippi, and we have touched only incidentally upon the rights of the Director General of Railroads under the proclamation of the President and the Acts of Congress.

The Director General of Railroads took over all of the property of Railroad Companies, including the Texas & Pacific Railway Company and all Receivers of Railroads, including their cash on hand and their accounts receivable, and we ask the Court to note especially that this is set up in the Director General's amended answer in this case. All receipts during Federal Control from operation of Railroads, whatever might be the specific source, were the property of the United States Government. All demands of every kind arising out of operation either of the Texas & Pacific or of the Mobile & Ohio which accrued during Federal Control or which accrued prior to Federal Control for that matter, if they had not been paid when the Roads were taken over, were the property of the Federal Government. We ask the Court especially not to overlook the fact that whatever during Federal Control was due to that transportation system known as the Texas & Pacific Railroad operated by the Director General was property of the Federal Government, and this included the (so-called) debt which the Director General operating the Mobile & Ohio admitted to be due. In the Ault case the United States Supreme Court construed the Federal Control Act and the proclamation of the President as establishing for the purpose of suits and remedies the seperate identity of the Director General with respect to each system of transportation taken over and

operated by him. The Director General of the Texas & Pacific Railroad (not the Texas & Pacific Railroad Company
223 or the Receivers) was one person, and the Director General of the Mobile & Ohio Railroad was another person for the purpose of suits and remedies. The finances and accounts of each of these entities was kept separate and distinct just as they were prior to Federal Control and would have continued to be kept but for Federal Control. If the complainant had shipped stock over the Texas & Pacific Railroad during Federal Control, and out of such shipment a cause of action had accrued to him, the right that he would have had but for Federal Control to bring suit in Mississippi and attach debts from the Mobile & Ohio to the Texas & Pacific was continued by the Federal Control Act. But let us not confuse the identity of the Director General operating the Texas & Pacific Railroad with the Texas & Pacific Railroad Company or the Receivers of the Texas & Pacific. Their identity was not merged by the Federal Control Act. On the contrary, in the Ault case and in other cases the Supreme Court of the United States has held that judgments cannot be rendered against the Railroad Companies on causes of action arising out of operation by the Director General. Neither can the Director General be held liable on a cause of action arising prior to Federal Control. In Sections 4 and 5 of his amended answer the Director General set out the facts that whatever indebtedness was due from that transportation system designated as Director General of Railroads operating the Mobile & Ohio Railroad Company was due to the Director General of Railroads operating the Texas & Pacific Railroad, and that it was not a debt due either to the Receivers or to the Texas & Pacific Railway Company. Here again we have an averment that the (so-called) debt in question was not due to the principal defendant in this case, but was due to
224 another person, to-wit, the Director General of Railroads operating the Texas & Pacific Railroad. Granting, as we must, that the Federal Control Act preserved the rights and remedies against common carriers which the public enjoyed before Federal Control, except insofar as might interfere with the needs of Federal operation, it cannot be said that the Federal Control Act or any other act of Congress

or the proclamation of the President extended the right and the remedy of attachment of debt so as to make it include condemnation of a debt due one person, namely, the Director General of Railroads operating the Texas & Pacific, to payment of a demand against another person, namely, the Texas & Pacific Railway Company. The effect of the ruling of the Court is to [hola] that during Federal Control the Director General operating the Texas & Pacific Railroad was identical with the Texas & Pacific Railway Company, to the extent that a debt (so-called) due the Director General operating the Texas & Pacific could be attached in the suit against the Texas & Pacific Railway Company. We do not think there is any warrant for such construction.

We argued very fully on the first appeal our contention that the United States Government had not consented to attachment or garnishment, and that by the provision in Section 10 of the Federal Control Act had specifically forbidden it. We will not weary the Court with a repetition of that argument, but we do earnestly ask the Court to reconsider its decision upon that question, which we believe to be erroneous. We desire to call the attention of the Court especially to the fact that, since the debt was due from the Director General operating the Mobile & Ohio to the Director General operating the Texas & Pacific, it was
225 the property of the Director General operating the Texas & Pacific and not the property of the Texas & Pacific Railway Company, the principal defendant, so that the Court is in truth and in fact taking the property of the Federal Government to pay a demand against the Texas & Pacific Railway Company which accrued prior to Federal Control.

We respectfully ask the Court to reconsider this case and enter a decree here in favor of this appellant.

JAMES C. DAVIS,
Director General of Railroads and Agent
of the United States,

By CARL FOX,
R. C. BECKETT,
Solicitors.

I hereby certify that I have this day mailed, first-class postage, prepaid, to Messrs. White & Ford, Attorneys of Record for the Appellee, at their post office address at Gulfport, Mississippi, a true copy of this suggestion of error.

CARL FOX.

(Endorsement)

21848

Jas. C. Davis, Director General, Agent,

v.

L. N. Dantzler Lumber Co.

Suggestion of Error.

Received and Filed Jul. 25, 1921.

W. J. Buck, Clerk.
W. J. Brown, D. C.

To the Clerk of the Supreme Court:

We the undersigned Judges of the Supreme Court of Miss., hereby certify that we have considered the written suggestion of error and have determined to overrule it.

SYDNEY SMITH,
GEO. H. ETHERIDGE,
W. H. COOK,
J. P. HOLDER,
E. O. [redacted]. Sykes

226 **SUPPLEMENTAL SUGGESTION OF ERROR.**

In the Supreme Court of Mississippi.

No. 21848

James C. Davis, Director General and Agent, et al., Appellant,

vs.

L. N. Dantzler Lumber Company, Appellee.

On Friday, July 22nd, 1921, this appellant, James C. Davis, Director General of Railroads and Agent of the United States, etc., mailed to the Clerk of the Supreme Court a suggestion of error, and mailed a copy to the attorneys for the appellee. We overlooked one point that we desire to make, and ask leave of the Court to file this supplement to the suggestion of error, which will be mailed to the Clerk on Saturday, the 23rd instant.

We respectfully suggest that the Court erred in holding that the Act of Congress of March 21, 1918, known as the Federal Control Act, did not forbid garnishment of a (so-called) debt due from the Director General of Railroads operating the Mobile & Ohio Railroad for the purpose of acquiring jurisdiction to adjudicate the rights between the complainant and the defendant, the Texas & Pacific Railway Company.

The Court held (and it was unquestionably correct) that "the Director General cannot be required to pay the money into Court, but the complainant will have to secure the money in a manner provided by the Federal Control Act. Section 206 of the Transportation Act of 1920". In
227 other words, the Court held that it could not condemn the (so-called) debt to the satisfaction of the demand of the complainant against the defendant, Texas & Pacific Railway Company, but entered a personal judgment against the Director General for that amount.

It is universally the rule, in Mississippi and everywhere else, for which it is unnecessary to cite authority, that in a suit in attachment against a non-resident defendant who is not personally served with process no personal judgment can

be rendered against the defendant, and the Court has no jurisdiction except to condemn the property attached to the payment of the demand against the principal defendant. It is held by the United States Supreme Court to be an unconstitutional deprivation of the non-resident's property without due process of law to enter a personal judgment against him. Under the law of attachment, therefore, the Chancery Court of Harrison County had no jurisdiction beyond the condemnation of the (so-called) debt to the payment of plaintiff's demand against the non-resident defendant, and this Court held, and correctly held, that it did not have that jurisdiction, the garnishee being the United States of America. That being true, if the garnishee had been a private person, or private corporation, this Court would have said at once that the Court below had no jurisdiction for any purpose. But this Court held that under the Federal Control Act a personal judgment could be rendered against the Director General of Railroads, the Agent of the United States under the Transportation Act. Leaving out of consideration any question of whether the process in this case was "mesne or final process" within the meaning of Section 10 of the Federal Control Act, it appears to us that
228 this Court is construing the Federal Control Act not only as preserving the rights and remedies to the public against common carriers which they would have had but for Federal Control, but extending the rights and remedies to include a remedy by attachment, which never did exist prior to Federal Control. There never was a remedy by attachment or by garnishment in a suit against a non-resident defendant not personally served with summons in cases where the Court could not for any reason condemn the property or debt attached to the payment of the demand against the principal defendant.

Respectfully submitted,

JAMES C. DAVIS,
Director General of Railroads and
Agent of the United States,

By CARL FOX,
R. C. BECKETT,
Solicitors.

I hereby certify that I have this day mailed, first-class postage, prepaid, to Messrs. White & Ford, Attorneys of Record for the Appellee, at their post office address at Gulfport, Mississippi, a true copy of this supplemental suggestion of error.

CARL FOX.

(Endorsements)

21848

Jas. C. Davis, Direc. Gen., Agent

v.

L. N. Dantzler Lumber Co.

Supplemental Suggestions of Error

Received and Filed Jul. 25, 1921.

W. J. Buck, Clerk.
W. J. Brown, D. C.

229 **ORDER OVERRULING SUGGESTION OF ERROR.**

Minutes Supreme Court of Mississippi. In Vacation.

September 24th, 1921.

No. 21,848

Jas. C. Davis, Director General,

vs.

L. N. Dantzler Lumber Company.

To the Clerk of the Supreme Court:

We, the undersigned judges of the Supreme Court of Mississippi hereby certify that we have considered the within suggestion of error and have determined to overrule it.

SYDNEY SMITH,
E. O. SYKES,
GEO. H. ETHRIDGE,
W. H. COOK,
J. B. HOLDEN.

230 State of Mississippi,
Hinds County.

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing are full, true and correct copies of all the papers, each and all of them constituting the record in the said Supreme Court of the State of Mississippi in the case of Jas. C. Davis, Director General, Agent of the U. S. and M. & O. R. R. Co. v. L. N. Dantzler Lumber Company, No. 21,848 on the docket of said court, all of which are now on file in my office and taken together constitute the record in said cause.

Given under my hand with the seal of said Court affixed at offices in the City of Jackson, Mississippi, this the .... day of ....., 1921.

.....
Clerk of the Supreme Court of Miss.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Mississippi, Greeting:

Being informed that there is now pending before you a suit in which James C. Davis, Director General of Railroads, as Agent under Section 206 Transportation Act 1920, etc., is appellant, and L. N. Dantzler Lumber Company is appellee, No. 21848, which suit was removed into the said Supreme Court by virtue of an appeal from the Chancery Court of Harrison County, Mississippi, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the tenth day of January, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,607. Supreme Court of the United States. No. 652, October Term, 1921. James C. Davis. Director General. etc., vs. L. N. Dantzler Lumber Company. Writ of Certiorari.

Supreme Court of the United States, October Term, 1921.

No. 652.

JAMES C. DAVIS, Director General of Railroads, as Agent of the United States under Section 206, Transportation Act, 1920, Operating Mobile & Ohio Railroad, Petitioner,

v.

L. N. DANTZLER LUMBER COMPANY, Respondent.

The return of the Supreme Court of Mississippi to the Writ of Certiorari issued by the Supreme Court of the United States of America, on the tenth day of January, One Thousand Nine Hundred Twenty-two, in the above styled cause.

Supreme Court of the United States, October Term, 1921.

JAMES C. DAVIS, Director General of Railroads, as Agent of the United States under Section 206, Transportation Act, 1920, Operating Mobile & Ohio Railroad, Petitioner,

v.

L. N. DANTZLER LUMBER COMPANY, Respondent.

Stipulation.

It is hereby stipulated and agreed by and between the Petitioner, James C. Davis, Director General of Railroads, as Agent of the United States under Section 206, Transportation Act, 1920, by Carl Fox and R. C. Beckett, his Attorneys of Record, and the Respondent, L. N. Dantzler Lumber Company, by W. A. White, its Attorney of Record, that the certified copy of the entire record and proceedings in the Supreme Court of Mississippi, which is now on file in the Supreme Court of the United States, as "Exhibit A" to the Petition for the Writ of Certiorari, shall be taken and considered for all purposes as if issued and filed by the Supreme Court of Mississippi as a return to the Writ of Certiorari granted by the Supreme Court of the United States in this cause on January 3, 1922, and issued January 10, 1922; and that said cause shall proceed in the Supreme Court of the United States on said record.

Witness our signatures, this the 31st day of January, 1922.

JAMES C. DAVIS,
Director General of Railroads, as Agent of the United States under Section 206, Transportation Act, 1920,
By CARL FOX,

R. C. BECKETT,
Counsel.

L. N. DANTZLER LUMBER COMPANY,
By W. A. WHITE,
Counsel.

STATE OF MISSISSIPPI,
Hinds County:

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi, hereby certify that the foregoing is a full, true and correct copy of the original Stipulation now on file in the Supreme Court of Mississippi.

Given under my hand with the seal of said Court affixed at offices in the City of Jackson, Mississippi, this the 4th day of February, 1922.

[Seal of State of Mississippi Supreme Court.]

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

[Endorsed:] File No. 28,607. Supreme Court U. S. October Term, 1921. Term No. 652. James C. Davis, Director General, Petitioner, vs. L. N. Dantzler Lumber Co. Writ of certiorari and return. Filed Feb. 10, 1922.

Supreme Court, U. S.
FILED
JAN 6 1923
WM. R. STANSBURY

No. 228

SUPREME COURT OF THE UNITED STATES.

October Term, 1922.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT OF THE UNITED STATES UNDER SECTION 206, TRANSPORTATION ACT, 1920, OPERATING MOBILE & OHIO RAILROAD, PETITIONER,

vs.

L. N. DANTZLER LUMBER COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONER.

CARL FOX,
R. C. BECKETT,
Counsel for Petitioner.

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I.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1927

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT OF THE UNITED STATES UNDER SECTION 206, TRANSPORTATION ACT, 1920, OPERATING MOBILE & OHIO RAILROAD, PETITIONER,

vs.

L. N. DANTZLER LUMBER COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONER.

SUMMARY.

This case involves, more or less, six distinct parties, which, for convenience, will hereinafter be referred to as follows:

(1) The Dantzler Lumber Company will be called the Lumber Company.

(2) The Texas & Pacific Railway Company will be called the Texas Corporation.

(3) The Receivers of the Texas Corporation will be called the Receivers.

(4) The Director General, operating the Texas & Pacific Railway, will be called the Director General of the T. & P.

(5) The Mobile & Ohio Railroad Company will be called the Mobile Corporation.

(6) The Director General, operating the Mobile & Ohio Railroad, will be called the Director General of the M. & O.

The facts in this case may be summarized as follows:

The Lumber Company had a claim against the Texas Corporation arising out of alleged damage to a shipment of cattle. The Texas Corporation went into the hands of Receivers. The Director General of Railroads of the United States took over from the Receivers the operation of the Texas & Pacific Railway. The Texas Corporation was, as to the State of Mississippi, a foreign corporation, and had no agent in Mississippi on whom service could be gotten. The Director General of the M. & O. did not owe the Texas Corporation anything, but carried on his books to the credit of the Director General of the T. & P. an amount of money which may be called a

quasi debt. The Lumber Company attached that so-called debt in Mississippi, under Section 536 of the Code of Mississippi, 1906, securing personal service on the Director General of the M. & O., and having service of process by publication on the Texas Corporation. The Director General of the T. & P. was not made a party to this suit in any way.

The Director General of the M. & O. protested vigorously against the attachment, on the ground that the so-called debt was not liable to be attached in any event, and that it could not be attached in this particular suit because it was not a debt due to the Railway Corporation against whom the Lumber Company had a claim.

The Court, nevertheless, ordered the so-called debt to be paid into court, which order has become final unless reversed by this Court, and would preclude any further claim to that particular money by the Director General of the M. & O.

That raises three general questions:

(1) Can the courts of the State of Mississippi attach by garnishment money which is owed by the Director General of Railroads of the United States, operating one railroad, to the Director General of Railroads, operating another railroad?

If No. 1 be answered in the affirmative, then:

(2) Can the courts of the State of Mississippi attach money owing to the Director General of Rail-

roads of the United States, operating a foreign railroad, and impound it in order to satisfy a claim which arose from the operation of the foreign railroad prior to federal control?

If both the preceding questions be answered in the affirmative, then:

(3) Did the Director General of Railroads of the United States, by taking over the operation and control of the Texas & Pacific Railway from its Receivers, become liable for the debts of the insolvent corporation?

HISTORY OF THE CASE AND STATEMENT OF FACTS.

A great part of this voluminous record relates to a number of railroads other than the Mobile & Ohio, which were made defendants as garnishees, and has no bearing on this controversy.

This case was twice before the Supreme Court of Mississippi, and it is necessary, we think, to set out the entire proceedings, omitting all reference to such parts of the record as relate only to railroads other than the Mobile & Ohio which were made defendants as garnishees.

On March 25th, 1918, the respondent Lumber Company instituted this suit against the Texas Corporation, as the initial carrier, in the Chancery Court of Harrison County, Mississippi, to recover damages on account of alleged injuries to a shipment of cattle transported from Fort Worth, Texas, to Howison, Mississippi, in October, 1917. It was averred in the original bill that the Texas Corporation was a foreign corporation and had no agent within the State of Mississippi; that various carriers in Mississippi, including the Mobile Corporation, were indebted to or had in their possession property of the Texas Corporation, and it was prayed that such debts or property be impounded by the Court and condemned

to satisfy the complainant's claim against the Texas Corporation under the provisions of Section 536 of the Code of Mississippi of 1906 (Section 293, Hemingway's Code), which provides for attachments and garnishments in chancery, and is as follows:

> "293. (536) Attachment against nonresidents.—The chancery court shall have jurisdiction of attachment suits based upon demands founded upon any indebtedness, whether the same be legal or equitable, or for the recovery of damages for the breach of any contract, express or implied, or arising ex delicto against any nonresident, absent or absconding debtor, who has lands and tenements within this state, or against any such debtor and persons in this state wno have in their hands effects of, or are indebted to, such nonresident, absent or absconding debtor. The court shall give a decree in personam against such nonresident, absent or absconding debtor if summons has been personally served upon him, or if he has entered an appearance."

Subsequently, under circumstances hereinafter related, James C. Davis, Director General of Railroads and agent of the United States under the provisions of Section 206 of the Transportation Act, 1920, operating the Mobile & Ohio Railroad, was substituted as garnishee defendant instead of Mobile Corporation.

An answer was duly filed in the name of the Mobile & Ohio Railroad Company, signed and sworn to by W. W. Middleton, who stated in his affidavit that he was "comptroller of the Mobile & Ohio Railroad Company under Federal Control and, as comptroller, head of the accounting department thereof" (Rec., pp. 71, 74). With this answer there was filed a "Statement of Amounts Due by the Mobile & Ohio Railroad Company to The Texas & Pacific Railway Company, as Shown by Books" (Rec., p. 74). It was averred, however, that said debts were not subject to garnishment, and that the writ was illegal and void for the following reasons:

That, on the 26th day of December, 1917, the President, by proclamation issued in pursuance of law, assumed possession and control for the Government of the United States of the transportation systems of the United States, including all of the property of the Mobile Corporation and the Texas Corporation used in transportation as common carriers; that any money which may have been due from the "Mobile & Ohio Railroad Company" to the Texas Corporation (the debt shown on statement referred to above filed with the answer) was property under the control of the Federal Government within the meaning of the proclamation of the President and the Act of Congress known as Federal Control Act; and that the attachment or garnishment in this case was forbidden by

the following provisions of the proclamation and Section 10 of the Federal Control Act, viz.:

> (The proclamation.) "Except with the prior written assent of said Director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers."
>
> (Section 10, Federal Control Act.) "That no process, mesne or final, shall be levied against any property under such Federal Control."

At the trial of the case, the principal defendant, the Texas Corporation, made no appearance, and a decree pro confesso was entered against that company on citation by publication. Thereupon a motion was made in the name of the "Mobile & Ohio Railroad Company" that the cause be dismissed as to it, for the reason that the "Writ of garnishment and the service thereof are void and no valid judgment can be rendered against said garnishee, for the reasons set out in said garnishee's answer" (Rec., p. 78). The Court granted the motion and dismissed the bill for lack of jurisdiction (Rec., p. 81).

From that order, the Lumber Company appealed to the Supreme Court of Mississippi, which, on March 3rd, 1919, reversed the decree of the lower court and remanded the case (119 Miss. 328, 80 Sou. Rep. 770 [Rec., pp. 93-109]). That was the first appeal, and

the decision is not the one which petitioner seeks to have reversed by this Court.

The Supreme Court of Mississippi held apparently on the first appeal that it was an indebtedness of the Mobile Corporation, which was admitted to be due, and that it was the corporation, and not the Director General, which had set up the defense that the debt was exempt from attachment. The Court said, after referring to the President's proclamation, and quoting from the Federal Control Act:

> "It will be seen from an analysis of these provisions that a carrier when sued is forbidden to set up the very defense it attempts to set up in this case. Such defense can only be made by the Director General intervening" (Rec., p. 100).

But that answer was held on the second appeal to be in fact the answer of the Director General.

When the case was remanded to the lower court, in order to clear up the confusion resulting from the use of the name of the Mobile & Ohio Railroad Company by the Director General, which was at that time required by the proclamation of the President, subsequently changed by the Director General's General Orders Nos. 50 and 50-A, an answer was filed by the Mobile Corporation (Rec., pp. 110-113), and at the same time an amended answer was filed by the Director General of the M. & O. (Rec., pp. 115-131).

In both the answer of the corporation and amended answer of the Director General, it was averred that the answer formerly filed in the name of the Mobile & Ohio Railroad Company was not intended to be and was not in reality the answer of the corporation, but was the answer of the Director General of Railroads, operating the Mobile & Ohio; that the agent at Meridian, Miss., upon whom the writ was served, was not an agent or employe of the Mobile Corporation, but was the agent and employe of the Director General of the M. & O.; and the Mobile Corporation averred that it was not indebted to the Texas Corporation. On motion of the complainant in the lower court, both the answer of the corporation and amended answer of the Director General were stricken from the files; but since the cause was dismissed in the Supreme Court as to the Mobile Corporation, and there the amended answer of the Director General was reinstated, the answer of the corporation need not be further considered. But we must refer further to the amended answer of the Director General of the M. & O.

It was further averred in the Director General's amended answer (Rec., p. 116) that at the time possession was taken by the United States of the Texas and Pacific Railroad, along with the other transportation systems, that railroad was in the hands of Receivers, who had continuously possessed and operated

it under a decree of a Federal District Court since October 27th, 1916, which period included the shipment and transportation of the cattle in question from Ft. Worth, Texas, to Howison, Miss.; that possession was taken by the United States Government from the Receivers and not from the Texas Corporation. It was further averred that the so-called debt set up in the original answer of the Director General, made in the name of the Mobile & Ohio Railroad Company, was due from himself on account of his operation of the Mobile & Ohio Railroad, to himself on account of his operation of the Texas & Pacific Railroad, and was not due to the Texas Corporation, the principal defendant; that this debt from himself to himself was not a debt in the true sense of the word or within the meaning of the laws of Mississippi, subjecting debts to garnishments. In addition to these averments, the Director General categorically denied that he was indebted to, or had in his possession or control, any property or effects of the Texas Corporation, at the time of the service of the summons or at any time thereafter (Rec., p. 119). The amended answer concluded with averments that the attachment or garnishment was a suit against the United States without consent, and was in contravention of the express provisions of the Federal Control Act and the proclamation of the President, and that any decree subjecting the so-called debt to payment of the com-

plainant's demand against the Texas Corporation would deprive the Director General of his property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution. As stated, this answer was stricken out on motion of complainant, but was reinstated, as will be hereinafter more fully shown, by the Supreme Court of Mississippi on the second appeal.

There was a supplemental bill of complaint against the Mobile Corporation to impound any additional moneys that might have become due after the filing of the original bill, and an answer denying any such indebtedness, both of which are now immaterial.

On the second trial of the case in the lower court, the principal defendant, Texas Corporation, again failed to appear, and a decree pro confesso was taken against that company, which was made final, showing an indebtedness of said company to the Lumber Company of $6,552.00. The Court further decreed that there was an admitted indebtedness from the Mobile Corporation to the Texas Corporation amounting to $3,053.94, which was ordered to be paid "into the Chancery Court of Harrison County, Miss., within thirty days, to be disbursed in accordance with this decree" (Rec., p. 168).

An appeal was taken by the Mobile & Ohio Railroad Company to the Supreme Court of Mississippi, and on motion in that court, James C. Davis, Director

General of Railroads, as agent of the United States under the Transportation Act, 1920, operating Mobile & Ohio Railroad, was substituted as defendant, and the cause was dismissed as to the Mobile Corporation. The Supreme Court of Mississippi thereupon reversed the decree of the Chancery Court of Harrison County and entered a decree there on July 11th, 1921, against your petitioner, James C. Davis, Director General of Railroads and agent of the United States, for the sum of $3,052.54 (Rec., p. 180). On July 25th your petitioner filed a suggestion of error (Rec., pp. 192-201), and on the same date an amendment thereof (Rec., pp. 202-204), which suggestion of error was overruled on September 24th, 1921 (Rec., p. 204), whereupon the decree rendered on July 11th, 1921, became final.

It is this final decision and decree of the Supreme Court of Mississippi which petitioner seeks to have reviewed by this Court. With reference to the amended answer of the Director General, which had been stricken out in the lower court, the Supreme Court of Mississippi said (Rec., p. 190):

> "* * * we must conclude that the answer of the Director General in the court below should have been treated by the court as an application by the Director General to be substituted as the defendant instead of the Mobile & Ohio Railroad Company, and substitution should have been

made at that time, but an application to substitute in this court has been made and allowed, and as to the Director General it must be treated as though made by the court below and the answer of the Director General be treated in this suit as embracing both the amended answer and the original answer, as the original answer was made by him and his agent in the name of the Mobile & Ohio Railroad Company, which was the only way it could be made at such time."

Since the Supreme Court of Mississippi reinstated the amended answer of the Director General and held that his answer "must be treated in this suit as embracing both the amended answer and the original answer," and entered a final decree instead of remanding the case for further hearing, necessarily the averments of the amended answer were taken to be true. The Court's opinion is, in fact, an opinion upon the case as made by the amended answer in connection with the original answer filed by the Director General in the name of the Mobile Corporation.

The Supreme Court of Mississippi held, citing Missouri Pacific R. R. Co. and Hines, Director General, v. Ault, 256 U. S. ...., decided June 1st, 1921, that for the purposes of suits and remedies under Section 10 of the Federal Control Act the Director General of Railroads was a separate and distinct entity with respect to each railroad controlled and operated by him. Upon a misconception, as we think, of the

Ault case, the Supreme Court of Mississippi held, as stated in the syllabus of the case (Rec., p. 181) prepared under the laws of Mississippi by the Supreme Court itself, that the Federal Control Act "authorizes a suit against a carrier under government control for a cause of action arising before such control and in such suit, another carrier being operated under government control, may be garnisheed and a judgment be rendered against it for a debt it owes the principal defendant * * *. In such suit, the different transportation systems being operated by the government are treated as separate parties for the purposes of suit and accounting."

The first clause of the quotation from the Court's syllabus is an abstract statement in part of the concrete holding of the Court that the so-called debt due from the Director General operating the Mobile & Ohio Railroad to himself as Director General operating the Texas & Pacific Railroad could be attached to obtain jurisdiction, without personal service, of a suit against the Texas Corporation, a foreign corporation, on a cause of action arising prior to federal control, and that thereupon a judgment could be rendered against the Director General for the amount of the so-called debt; and that this is true even though the Director General did not take possession from the Texas Corporation, but from Receivers.

Federal Question Stated.

In the courts of Mississippi, including the Supreme Court, your petitioner claimed and was denied the right and privilege of exemption and immunity from attachment or garnishment of funds in his hands during Federal control in his capacity as Director General operating the Mobile & Ohio Railroad, constituting a part of the funds used by him in the operation of the transportation systems of the United States. Your petitioner also claimed and was denied the right and privilege of exemption and immunity from attachment and condemnation of a debt (so-called) owing to him in his capacity as Director General operating the Texas & Pacific Railroad, to satisfy respondent's demand on a cause of action alleged to have arisen prior to Federal control against the Texas Corporation, to whom the Director General was not indebted, and from whom the Director did not take possession under the President's proclamation. Possession was taken from Receivers of a U. S. District Court appointed more than a year prior to Federal control. The res in question was a debt (so-called) from the Director General of the M. & O., to himself, as Director General of the T. & P.

Petitioner's claim of right, privilege and immunity was made under the Constitution of the United States on the ground that it prohibits suits against the

United States without consent, the garnishment against the Director General of the M. & O. being such a suit, and also on the ground that to condemn a debt (so-called) owing to the Director General of the T. & P., to satisfy a demand arising prior to Federal control against the Texas Corporation, to whom he was not indebted, deprived the Director General of his property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and was in that respect also a suit against the United States without consent. Your petitioner also claimed the right, privilege and immunity, under the proclamation of the President, by which he took possession and assumed control of the transportation systems of the United States, and the laws in pursuance of which the said proclamation was made, and under the Acts of Congress known as the Federal Control Act, and the Transportation Act, 1920.

The Supreme Court of Mississippi denied petitioner's said claims by its decree and opinion rendered herein on the 11th day of July, 1921 (.... Miss. ...., 89 Sou. Rep. 148; Rec., pp. 180-191), which decree became final when petitioner's suggestion of error filed July 25th, 1921, was overruled on the 24th day of September, 1921. Incidentally, the Supreme Court of Mississippi, by the said decision, de-

nied the claim of petitioner that the authority exercised by the courts of Mississippi under the laws of that state over the funds of petitioner was repugnant to the Constitution and the said laws of the United States.

POINTS AND AUTHORITIES.

I.

Can the Courts of Mississippi Attach by Garnishment Money Which Is Owed by the Director General of Railroads Operating One Railroad to the Director General of Railroads Operating Another Railroad?

A. Funds in the hands of an official of the United States, in his official capacity, are not liable to be seized under process of garnishment or attachment in the absence of expressed statutory authority.

> Buchanan v. Alexander, 4 How. 20, 11 U. S. L. Ed. 857.

The Director General of Railroads was such an official and these funds were in his hands in his official capacity.

B. There is no Act of Congress authorizing such funds to be seized by the Chancery Court of the State of Mississippi.

At the time the process was served on the Mobile & Ohio Railroad Company, under the provisions of Section 536, Code of Mississippi, 1906 (Hemingway's Code, Sec. 293), that is, on March 25th, 1918, the Act

of Congress approved March 21st, 1918, known as the Federal Control Act, was in force. Section 10 of that act provided:

> "Sec. 10. That carriers while under Federal Control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws, or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal Control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law, and in any action at law or suit in equity against a carrier, no defense shall be made thereof upon the ground that the carrier is an instrumentality or agency of the Federal Government."

That is the only authority which might be claimed to justify the attaching of funds in the hands of tne Director General of Railroads and impounding them in the Chancery Court of Mississippi to satisfy the plaintiff's claim against another carrier. We contend that the words, "Actions at law or suits in equity," cannot properly be construed as showing a manifest intention of Congress to justify such an attachment or garnishment. The suit involved in this case was a suit against the Texas Corporation, and the writ served against the Director General of Railroads, using the name of the Mobile & Ohio Railroad, was

merely an incident by which the plaintiff desired to more conveniently and promptly enforce the collection of his claim against the Texas Corporation.

C. Attachment or garnishment of funds in the hands of the Director General of Railroads is expressly prohibited by Section 10 of the Federal Control Act.

Even if we should concede, which we do not, that the above-mentioned general grant of power to bring suit against the Director General of Railroads or the agent provided under the Transportation Act of 1920, might be construed to give litigants the right to subject the funds in the hands of the Director General to seizure under attachment or garnishment, still we believe that Congress has settled the question by that provision of Section 10 of the Federal Control Act, which reads:

> "But no process, mesne or final, shall be levied against any property under such Federal Control."

The Supreme Court of Mississippi has construed Section 536, Mississippi Code, 1906 (Section 293, Hemingway's Code), in the case of Delta Insurance and Realty Company v. Interstate Fire Insurance Company, 113 Miss. 542, 74 So. 420. In deciding that case the Court used the following language:

> "The settled law in Mississippi is that if the defendant is a nonresident and the thing in-

volved, the res, is within the territorial jurisdiction of the court, and is brought under the control of the court by legal process, viz., attachment against the lands, or attachment and garnishment against any such debtor and resident persons (defendants) who have in their hands effects of, or are indebted to, such nonresident debtor, then the state court has jurisdiction to render judgment, not against the nonresident in personam, but against the thing, the res, when it is brought under the control of the court by its process, and not otherwise.

"The basis of the jurisdiction of the chancery court in this case is statutory, and the court has no jurisdiction under the statute, unless the following facts exist, viz., the absence of the debtor, the presence here of effects in the hands of resident persons belonging to him, or debts due to him by resident persons, or his having lands or tenements in this state (Section 536, Code 1906; Advance Lumber Company v. Laurel National Bank, 86 Miss. 419, 38 Sou. 313).

"The above facts, or any one of them, might exist and still the court would be without jurisdiction to proceed to judgment against the thing unless it be first brought under control of the court by proper process against the land or against the person having the effects belonging to or owing the debt to the nonresident defendant."

Applying this test to the instant case, the chancery court could only acquire jurisdiction by impounding the money of the United States Government in the

possession of the Director General of Railroads, operating the Mobile & Ohio Railroad Company. To accomplish this result, it must be necessary to seize and impound the money of the United States Government and to give judgment against the money. Accordingly, the Chancellor at the first trial of this case held that he had no jurisdiction of the case because of his inability to bring the res into court and the refusal of the Director General of Railroads to pay the money into court.

The Supreme Court, however, in its first opinion in this case, shown on pages 93 to 109 of the printed record, reversed this decision of the lower court and held that funds in the hands of the Director General of Railroads were liable to seizure under attachment and garnishment. On the remand of the case the Chancellor, therefore, proceeded to attempt to comply with the decision of the Supreme Court and issued his order against the Director General of Railroads that the money be paid into court within thirty days. On the final appeal the Supreme Court of Mississippi held that the Chancellor had no authority to order the money to be paid into court within thirty days or any other time, but that the writ, though admittedly unenforceable, was sufficiently valid to give jurisdiction to the Court to render a judgment in personam against the Director General for failure to pay the money into court. This seems rather illogical on its

face, because, according to the Supreme Court of Mississippi, no order could legally be issued ordering the Director General to pay the money into court, and yet a judgment in personam could be given against the Director General for failure to pay the money into court.

Without considering further the logic of the application of the Mississippi statute, let us see if Congress has not settled the question by its prohibition against the levy of mesne or final process. The Supreme Court of Mississippi held that "process, mesne or final" did not refer to suits begun by process of attachment or garnishment, but merely to such process where issued after the beginning of the suit, since the word "mesne," it said, referred to the middle, between the beginning and the end.

"Mesne process" has acquired a technical meaning, which includes all process, except the summons or subpoena, by which the principal defendant is brought personally into court, and the final process by which judgment is collected. In Webster's International Dictionary "mesne process" is defined as follows:

> "Mesne process, intermediate process, process intervening between the beginning and end of a suit, sometimes understood to be the whole process preceding the execution. Blackstone. Burrill."

In Volume V, Words and Phrases, first series, pages 4495 and 4496, mesne process is defined as follows:

"Mesne process, strictly speaking, embraces all writs and orders of the court necessary for the carrying on of the suit after it has been instituted, from and after the summons, which is original process, up to, but not including, those writs which are necessary to secure the benefits of the suit to the successful party, which are final process; but, in the sense in which the phrase mesne process has come to be used, it embraces all writs preceding execution, and describes any and all writs except final process (Birmingham Dry Goods Co. v. Bledsoe, 21 So. 403, 113 Ala. 418; Reeves v. Ferguson, 31 N. J. Law [2 Vroom] 289, 291; Arnold v. Chapman, 40 N. E. 853, 163 Mass. 530).

"Mesne process is sometimes put in contradistinction to final process or process of execution, and it then signifies all such process as intervenes between the commencement and end of the suit (Pennington v. Lowinstein [U. S.], 19 Fed. Cas. 168).

"The technical phrase, 'mesne process,' is commonly used in contradistinction to 'final process,' so as to include the process by which the defendant is brought into court. The summons or the capias is usually spoken of as the mesne process, where, under an existing practice, it is actual primary process, and not intermediate process at all (Hirshiser v. Tinsley, 9 Mo. App. 339, 342)."

Writs of attachment and garnishment are merely means by which a complainant endeavors to enforce the collection of a judgment against a principal debtor, and it would seem that their nature is the same, whether they are issued before or after the principal judgment is obtained.

Section 10, Federal Control Act, has received a practical construction in General Order 43 of the Director General of Railroads, dated September 5th, 1918, which is as follows:

> "Whereas, proceedings in garnishment, attachment, or like process, by which it is sought to subject or attach money or property under Federal Control, or derived from the operation of carriers under Federal Control, under the Act of Congress of March 21, 1918, are inconsistent with said act, and with the economical and efficient administration of Federal Control thereunder; and,
>
> "Whereas, such proceedings are frequently commenced, particularly for the garnishment or attachment of amounts payable, or claimed to be payable, as wages or salaries of employes, which practice is prejudicial to the interests of the Railroad Administration in the operation of the lines and systems of transportation under Federal Control, and is not necessary for the protection of the rights or the just interests of employes or others; and
>
> "Whereas, if any rules or regulations become necessary to require employes to provide for

their just debts, the same will be issued hereafter;

"It Is Therefore Ordered, that no moneys or other property under Federal Control or derived from the operation of carriers while under Federal Control shall be subject to garnishment, attachment, or like process, in the hands of such carriers, or any of them, or in the hands of any employe or officer of the United States Railroad Administration."

The judgment was rendered by the Chancery Court June 29, 1920, and by the Supreme Court of Mississippi July 11, 1921.

It has been held in the following cases that funds in the hands of the Director General are not liable to be impounded in court by process of attachment or garnishment:

Dooley v. Railroad Co., 250 Fed. 142 (U. S. District Court, Minn.);
Dickens v. Bransford Realty Co., 210 S. W. 644 (Tenn.);
Greening v. Bank, 228 S. W. 382 (Ark.).

The only case we have found to the contrary is the case of Hines v. Minor, 105 S. E. 851 (Ga.).

II.

Can the Courts of the State of Mississippi Attach Money Owing to the Director General of Railroads of the United States, Operating a Foreign Railroad, and Impound and Dispose of It in Order to Satisfy a Claim Which Arose From the Operation of the Foreign Railroad Prior to Federal Control?

Under the pleadings in this case the principal claim of the Lumber Company was a claim for damages against the Texas Corporation. It is also uncontroverted that the so-called debt which the judgment of the Supreme Court of Mississippi attempts to dispose of was a fund carried on the books of the Director General of the M. & O. to the credit of the Director General of the T. & P. The Texas Corporation had no interest in that fund. The Supreme Court of Mississippi recognized that the Decree of the Chancellor, which ordered the Director General of the M. & O. to pay the fund into court within thirty days, was void. If the Director General of the M. & O. had been a private individual, there is no doubt but that this order would have been valid and would have been the usual procedure to be followed in such a case. In the event that the person ordered to pay the money into court within thirty days had failed to do so, then a personal judgment would doubtless have

been given against him by reason of the failure to obey the order of the Court. The Supreme Court of Mississippi, although it recognized the invalidity of such an order, yet gave a personal judgment against the Director General of the M. & O. for failure to pay the money into court in accordance with the order.

The Supreme Court of Mississippi in Delta Insurance & Railroad Co. v. Interstate Fire Insurance Co., 113 Miss. 542, 74 So. 420, said "the State Court has jurisdiction to render judgment, not against a non-resident in personam, but against the thing, the res, when it is brought under the control of the court by its process." Since the debt, the res, of which the Mississippi Courts had jurisdiction was not owing to the principal defendant, the Texas Corporation, then that Company is not affected in any way whatever by the judgment. It was not a judgment in personam against that Company, nor a judgment in rem against any property of or debt owing to that Company. That being true, if the Director General of the T. & P. had paid the judgment and then demanded reimbursement of the Texas Corporation, that Company would have been under no legal obligation to reimburse him. The judgment was rendered against the property of the Director General of the

T. & P. as a sort of alter ego of the Texas Corporation under the Mississippi Supreme Court's construction of Section 10, Federal Control Act.

It seems to us after reading the opinion of the Supreme Court of Mississippi that it must have arrived at its decision to render the judgment in that form by first holding that a person having a claim against a Railroad Corporation, on account of a cause of action which arose out of the operation of the railroad prior to Federal Control, would have the right to bring suit and get judgment against the Director General, operating that railroad. It must have regarded the Director General of the T. & P. as being substantially the same person, for the purpose of being sued, as the Texas Corporation. Therefore, it considered that the Court had the right to impound and dispose of a fund or debt belonging to the Director General of the T. & P. in order to satisfy the claim against the Texas Corporation. It held that the Federal Control Act authorizes a suit against the Director General on a cause of action arising prior to Federal Control, citing the case of Missouri Pacific Railroad Co. v. Ault, 256 U. S. ..., 65 L. Ed. 647, decided June 1, 1921, as authority for so holding.

In the Ault case this Court construed the phrase, "carriers while under Federal Control," as it is used in Section 10 of the Federal Control Act, saying:

> "Here the term 'carriers' was used as it is understood in common speech—meaning the transportation systems, as distinguished from the corporations owning or operating them. Congress had, in section 1, declared that such was its meaning."

And in the next paragraph the Court continued:

> "Thus, under section 10, if the cause of action arose prior to Government Control, suit might be instituted or continued to judgment against the company as though there had been no taking over by the Government. * * * If the cause of action arose while the Government was operating the system, the 'carrier while under Federal Control' was, nevertheless, to be liable and suable. This means, as a matter of law, that the Government or its agency for operation could be sued, but under the existing law the legal person in control of the carrier was responsible for its acts."

That was an unequivocal holding that "if the cause of action arose prior to Federal Control suit might be instituted or continued to judgment against

the company. • • • If the cause of action arose while the Government was operating the system • • • the Government or its agency for operation could be sued."

It may be said that in the Ault case the question was whether the Missouri Pacific could be sued and held liable for an act of the Director General operating its railroad, and in the case at bar the question is whether the Texas & Pacific Railway Company can be sued on a cause of action arising prior to Federal control, and judgment rendered thereon, which is, in effect, a judgment against the Director General operating that company's property. We think that this Court decided the latter question adversely to the Supreme Court of Mississippi, when it said: "Thus, under section 10, if the cause of action arose prior to Government Control, suit might be instituted or continued to judgment against the company," and that that construction of section 10 was within the scope of the case before this Court. But if it should be held that the question was not before this Court, we say that there is nothing whatever in the language of Section 10 of the Federal Control Act which authorizes a judgment which requires the Director General operating the Texas & Pacific Railroad to satisfy out of his own funds a demand against the Texas & Pacific Railway Company, which arose prior to Federal Control.

But this was not even a suit against the Director General on a cause of action arising prior to Federal Control. The Director General of the T. & P. was not even made a party to the suit. This suit was brought against the Texas Company on a cause of action arising prior to Federal Control, which, of course, was entirely proper; but although the Director General of the T. & P. was not made a party to the suit, the judgment was in fact against him, because its intent and effect was to take property belonging to the Director General of the T. & P. and use it to satisfy the claim against the Texas Corporation.

There are many cases holding that a suit is properly brought against a corporation owning a railroad on a cause of action arising prior to Federal Control, while the corporation was operating the railroad. We have been unable to find any case where a suit has been brought against the Director General on a cause of action arising prior to Federal Control.

III.

Did the Director General of the United States by Taking Over the Operation and Control of the Texas & Pacific Railway from Its Receivers Become Liable for the Debts of the Insolvent Corporation?

The decree of the United States District Court appointing the Receivers of the Texas & Pacific Rail-

way was exhibited with the Director General's amended answer (Rec., pp. 121-131), from which it will be seen that the Texas Corporation, the principal defendant in this case, had no authority whatever over its property at the time it was taken by the Director General, and had no right to make any contract with anyone, including the Director General, concerning its property. The Director General took possession of the Texas & Pacific Railway from the hands of its Receivers. So that, even if the Supreme Court of Mississippi's construction of the Federal Control Act were correct, i. e., that it authorizes a suit against the Director General on a cause of action arising prior to Federal Control, the Director General could only have been sued on a cause of action arising against the Receivers, and that ruling is not applicable because no cause of action was alleged against the Receivers, or any recovery sought against them, nor were they made parties to the suit in any way. If the courts of Mississippi can give a judgment against the Director General of the M. & O., impounding a debt owed by the Director General of the M. & O. to the Director General of the T. & P., and dispose of the money so impounded to satisfy the Lumber Company's claim against the Texas Corporation, it could only be justified on the theory that the Director General, in taking over the control and operation of the Texas & Pacific Railway from its Receivers, assumed

liability for all the debts of the Texas Corporation itself. Since the corporation was in the hands of Receivers, it was doubtless insolvent. There was no personal judgment against the defendant Texas Corporation. None of its property or property rights were affected by the judgment. If the judgment is valid and if the Director General of Railroads should honor it in accordance with the provisions of the Transportation Act, 1920, for the payment of judgments, and should pay the money into court and allow it to be paid over by the Court to the Lumber Company, there would be no way to require the Texas Corporation to reimburse the Director General. The courts of Mississippi would have no authority to make any order requiring the principal defendant, the Texas Corporation, to reimburse the Director General for the money so paid out. Nor, if it had authority and should make such an order, does it appear that there would be any way to enforce the order, in view of the apparent insolvency of the Texas Corporation. Under such circumstances, to construe the Federal Control Act as authorizing such a judgment is to hold that Congress intended that the Director General could be required to pay the debts of and satisfy demands against every insolvent railroad company in the country, which was in the hands of Receivers at the time the Director General took control of railroads, regardless of his relation to them and without

any hope of reimbursement. The effect of such an order, if it affected an individual or a private corporation, would be the taking of property without due process. Since it is the property of the United States Government which is attempted to be taken, it is inconceivable that the Government would allow its property to be so taken.

The Supreme Court of Mississippi brushed aside the fact of the existence of the Receivership of the Texas Corporation by saying that the garnishee defendant had no right to interpose a defense to the principal claim. It so happened that the certified copy of the decree of the United States District Court, appointing the Receivers of the Texas Corporation, which was exhibited with the answer, showed that at the time of the movement of the shipment of cattle, which formed the basis of the principal cause of action, the Texas & Pacific Railway was being operated by Receivers and was not being operated by the Texas Corporation. Therefore, the Lumber Company's claim was in truth against the Receivers and it had no claim against the Texas Corporation. The Supreme Court of Mississippi may have been correct in holding that the garnishee defendant, the Director General of the M. & O., had no right to introduce the evidence for that purpose. The Lumber Company's declaration stated that it had a cause of action against the Texas Corporation, and

the garnishee defendant may have had no right to dispute that claim. But that was not the purpose for which the fact of the Receivership was brought out by the Director General of the M. & O. in his answer. The Receivership was brought out in order to show that the Director General did not take possession of the Texas & Pacific Railway from the Texas Corporation, but took possession of it from its Receivers, thus severing any possible relation of liability by the Director General to the Texas Corporation. That fact should have been sufficient to have prevented the Supreme Court of Mississippi from holding that it was proper to take the property of the Director General of the T. & P. to satisfy a claim against the Texas Corporation.

However, it is plainly shown in the amended answer of the Director General of the M. & O., which was undisputed, and, therefore, must be taken as true, that the respondent had no claim against the Texas Corporation, since the carrier known as the Texas & Pacific Railway was being operated at the time his cattle moved by Receivers appointed by the District Court of the United States. If the Lumber Company had a claim against the corporation it should have been presented to the Court for allowance with other such claims. The Receivers were never brought into court or made parties to this litigation even by publication. We think that the Supreme Court of Mis-

sissippi should not have shut its eyes to this obvious fact, even if brought out, incidentally, in the answer of the garnishee, the Director General of the M. & O.

We therefore respectfully submit that the Supreme Court of Mississippi has misconstrued an Act of Congress and the authority exercised under the United States, and that the judgment of the Supreme Court of Mississippi against James C. Davis, Director General, Agent of the United States, in favor of L. N. Dantzler Lumber Company, should be reversed and the suit should be dismissed.

Respectfully submitted,

CARL FOX,
R. C. BECKETT,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 228

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT OF THE UNITED STATES UNDER SECTION 206, TRANSPORTATION ACT 1920,

Petitioner,

versus

L. N. DANTZLER LUMBER COMPANY,

Respondent.

BRIEF FOR THE RESPONDENT

STATEMENT OF CASE.

The receivers of the Texas and Pacific Railway contracted with respondent for the transportation over its own line and others of a large shipment of cattle from Ft. Worth, Texas, to Howison, Mississippi. The receivers, in con-

tracting, used the name of the Texas and Pacific Railway (R., p. 21.) The shipment was damaged; suit was brought against the initial carrier and, in bringing the suit, the Texas and Pacific Railway was named as defendant for the reason the receivers had used that name in contracting and the respondent knew nothing of a receivership. The Mobile and Ohio Railroad, with other carriers, was garnished and the Mobile and Ohio, on June 17, 1918, filed its answer (R., pp. 71-74), to which we call the Court's especial attention, admitting an indebtedness of $3053.94 to the Texas and Pacific Railway, showing that the receivers were dealing with others in the name of the railway. This answer claimed the garnishment was illegal because of Federal control, and for no other reason, and on that ground made a motion to dismiss the writ of garnishment (R., p. 78.) On July 9, 1918, the Chancery Court of Harrison County, where the suit was pending, sustained the motion and dismissed the suit (R., pp. 81-82.) This respondent appealed to the Supreme Court of Mississippi and that Court reversed the case. Opinion (R., pp. 93-109, inc.), and in the opinion used language which the Mobile and Ohio Railroad construed to mean that the Director General of Railroads, and not the carriers, should make the claim that the garnished fund was not subject to attachment and, upon return of the case to the Chancery Court, the Mobile and Ohio Railroad filed another answer stating the former answer was the answer of the Director General (R., pp. 110-114.) There was also filed what is termed the "amended answer" of the Director General, in which the claim was made that the fund was not subject to garnishment by

reason of Federal control of railroads and, further, that in 1916 (and long before the bill of lading was signed and the cattle damaged) receivers were appointed for the Texas and Pacific Railway (R., pp. 115-131, inc.) The lower Court struck these so-called amended answers, and entered a decree against the fund (R., pp. 168-170), but not against the Director General, and the Supreme Court of Mississippi on appeal reinstated these stricken answers. This appeal was taken by the Mobile and Ohio Railroad, and not by the Director General (R., pp. 170-171), but in the Supreme Court of Mississippi, on this second and last appearance of the case there, the Director General moved to substitute himself as defendant instead of the Mobile and Ohio Railroad, upon the grounds:

> 1. "This suit is based on a cause of action arising out of the possession, use or operation by the President of the United States of the railroad or system of transportation of the Mobile and Ohio Railroad.
>
> 2. "Sec. 206 of the Transportation Act, 1920, approved February 28, 1920, provides that suits of the above character pending at the termination of Federal control may be prosecuted to final judgment, substituting the agent designated by the President of the United States.
>
> 3. "James C. Davis, Director General of Railroads, has been designated by the President for the purpose of such suits under the provisions of Sec. 206 of the Transportation Act of 1920." (R., p. 178.)

The Supreme Court of Mississippi sustained the motion (R., p. 179), and all writs of garnishment, including the one

against the Mobile and Ohio Railroad, were, at the instance of the Director General, discharged and the Mobile and Ohio Railroad was dismissed from the suit and the judgment was rendered against the Director General (R., p. 180), and it was the ruling of the Court that the judgment so rendered could not be collected in any way other than as provided by the laws of the United States (R., pp. 181-191.) All questions of garnishment or attachment thereby became academic, moot and immaterial, and the complaint of petitioner in this Court is directed at the ruling of the Chancery Court of Harrison County, instead of the ruling of the Supreme Court of Mississippi, which last Court completely annulled the ruling of the Chancery Court, the Supreme Court of Mississippi rendering the decree petitioner maintained should be rendered.

BRIEF OF THE ARGUMENT.

The mere fact that the cause of action accrued prior to Federal control would not prohibit the suit from proceeding against the Director General, and the rights of the lumber company would not be suspended pending Federal control. Under no circumstances could the Director General substitute himself as defendant upon the ground he was the proper defendant, procure the dismissal of the other defendants, and then claim he was not the proper party to sue.

ARGUMENT AND AUTHORITIES.

We cite, as controlling, the following:

Missouri Pacific Railroad Co. v. Ault, 65 L. Ed. (U. S.), 1087.

The Federal Control Act, 40 Stat. at Large, 451, Comp. Stat., Sec. 3115-¾a.

The Transportation Act of 1920, 41 Stat. at Large, 456.

Our argument will be so intermingled with a reply to petitioner's brief that we will combine the two. The errors in statements of facts by petitioner are few and unintentional and will be corrected, by reference to the record, as reached. Petitioner must sustain one of his three propositions, which are:

1. Can the Courts of Mississippi attach by garnishment money which is owed by the Director General of Railroads operating one railroad to the Director General of Railroads operating another railroad?

In answer we say this question need not be answered because it is not involved. The only garnishment of any fund took place in the Chancery Court of Harrison County and the Supreme Court of Mississippi dismissed all garnishments and discharged the garnishees.

2. Can the Courts of the State of Mississippi attach money owing to the Director General of Railroads of the United States, operating a foreign railroad, and impound

and dispose of it in order to satisfy a claim which arose from the operation of a foreign railroad prior to Federal control?

In answer we say the question is not involved because the Courts of Mississippi have not impounded or disposed of any fund whatever but, on the contrary, have expressly released it and discharged the holder of the fund.

3. Did the Director General of the United States, by taking over the operation and control of the Texas and Pacific Railway from its receivers, become liable for the debts of the insolvent corporation?

For the sake of argument, we answer no, and we do not so contend, and clearly such a question is not involved in the case. There is no proof of insolvency and, if so, that would be immaterial. This claim is not one against an insolvent corporation. It is a claim against the receivers for an act of their own during the receivership, and the government took over receiverships like everything else. If a suit could be prosecuted against a railroad not in the hands of a receiver prior to Federal control, it could be prosecuted against one in the hands of receivers. The Federal control act makes no distinction. The brief of petitioner is calculated to lead the Court to believe the claim of respondent accrued before the receivership and was one for allowance in the receivership proceeding, but this is untrue.

Replying further to petitioner's brief it is stated that the Director General of the Mobile and Ohio did not owe the

Texas and Pacific anything. The answer admits the indebtedness, but this is all utterly immaterial for the reason that no decree *in rem* has been rendered. On page 3 of brief petitioner states that the Director General was not made a party in any way. We have pointed out where he substituted himself, both in the lower Court and in the Supreme Court, and by his substitution procured the discharge of the parties defendant other than himself.

But petitioner makes one serious misstatement and one we are unable to account for. It is said, page 3 of brief:

> "The Court, nevertheless, ordered the so-called debt to be paid into Court, which order has become final, unless reversed by **this** Court, and would preclude any further claim to that particular money by the Director General of the M. & O."

The final decree of the Supreme Court of Mississippi discharged the fund (R., p. 180), and this Court is dealing solely with a judgment *in personam* against the Director General, which there has been no effort to enforce.

Petitioner relies for his statement of a Federal question on the hypothesis that the fund is involved and, this being a false issue, we submit there is no Federal question. The argument of petitioner here is from the standpoint of the final decree of the Chancery Court of Harrison County, and the decree of the Supreme Court of Mississippi is lost sight of absolutely. The fund was not the property of the Mobile and Ohio Railroad and the property of the Director General. If the Mobile and Ohio's the Director General

could not complain. If the Director General's still it has been released. In the pleadings filed by the Director General in the lower Court he made the claim that the fund was his, and he sought to make a Federal question on that ground. Now in this Court he claims in brief the fund was the property of the receivers of the Texas and Pacific Railway. We submit, with deference, that petitioner is doing too much jockeying with parties and that a position taken cannot be cast aside at will. If the receiver's money, as he now claims, he cannot complain, and the only semblance of Federal question he argues is with reference to the fund, and the fund is not involved. It is also argued that this is a suit against the United States. This question is too well settled in the negative to call for argument.

Petitioner devotes pages 19 to 27 of his brief to argument that the garnishment and direction to pay the money into Court was wrongful. We are unable to appreciate this argument in view of the fact that that proceeding took place in the Chancery Court and the Supreme Court of Mississippi corrected it by reversing the decree and discharging the garnishee. Certainly the garnishee being discharged could do what he pleased with the fund. There is no decree in this case with reference to a fund. Likewise any argument of whether garnishment process is mense or final becomes immaterial in view of the Mississippi Supreme Court's decision.

Counsel are in error when they state, on pages 23 and 24 of brief, that the Chancery Court issued its order "against

the Director General of Railroads" to pay the money into Court, and that the Supreme Court rendered a decree against the Director General for failure to pay the money into Court. This is erroneous. (R., pp. 168, 169, 170 and 180.) The decree of the Chancery Court was against the Mobile and Ohio and all answers of the Director General had been stricken. The Supreme Court expressly released the fund and rendered a decree *in personam*, and not a word in the decree or the opinion relates to a refusal to pay the money into Court, but the opinion expressly provides this is not to be done or any other sort of execution to issue. If that had been the theory of the decree it would have condemned the money.

Petitioner states he has been unable to find any case where suit has been brought against the Director General on a cause of action originating prior to Federal control. We need look no further than the Federal Control Act, the Transportation Act and the *Ault case, supra*, for this authority. In the *Ault case* this Court says:

> "The plain purpose of the above provision (referring to the statutory provision for allowing suits to be brought as theretofore) was to preserve to the general public the rights and remedies against common carriers, which it enjoyed at the time the railroads were taken over by the President, except insofar as such rights or remedies might interfere with the needs of Federal operation. The provision applies equally to cases where suits against the carrier were pending in the Courts on December 28, 1917; to cases where the cause of action arose before that date and the suit against the company was filed after

it, and to cases where both cause of action and suit had arisen or might arise during Federal operation. The government was to operate the carriers, but the usual immunity of the sovereign from legal liability was not to prevent the enforcement of liabilities ordinarily incident to the operation of carriers. The situation was analogous to that which would exist if there were a general receivership of each transportation system. Operation was to be continued as theretofore, with the old personnel, subject to change by executive order. The Courts were to go on entertaining suits and entering judgments under existing law, but the property in the hands of the President for war purposes was not to be disturbed. With that exception the substantial legal rights of persons having dealings with the carriers were not to be affected by the change of control."

Missouri Pacific R. R. v. Ault, 65 L. Ed. (U. S.), 1090.

In this case the respondent was proceeding as it unquestionably had a right to, but for Federal control, and the Director General came into the suit saying in effect, "because of Federal control I am the one to sue," procuring the dismissal of the parties respondent was then suing. If he was not a proper party he should not have said he was, assumed the defense and procured the dismissal of the other defendants. If he was not a proper party the proceeding with the suit, without him, would not affect him. We submit the Director General cannot, in order to seek to make a Federal question, substitute himself as defendant, procure the dismissal of the other defendants on the ground that he, not they, is liable, if anyone be, and then assert he is not

liable because the action accrued prior to Federal control. It will be noted that without the Director General as a party no Federal question could be raised in any event. He seeks to raise such question on the ground that a judgment has been rendered against him for which he is not liable, and this, too, when he has in the case assumed liability. He cannot assume this liability for the purpose of raising or attempting to raise a Federal question, and then deny the liability on the merits.

Counsel state in brief the Texas and Pacific was insolvent. This is the only authority we find for this statement, but if it were it is very probable that a great many carriers, not in the hands of receivers, were insolvent when taken over by the Government, and the Control Act makes no provision that insolvent roads cannot be sued, but expressly provides for the taking over of those under receivership just as all others were taken over. But the solvency or insolvency cuts no figure. The receivers contracted this liability. Even if the receivership had been insolvent the situation would be the same. Counsel complain at the trouble in settlement between the Director General and the carrier for the obligation to respondent. This was a matter for settlement between them. The liability to respondent would be deducted by the Director General from the rental due the receivers, but in its last analysis the mode of settlement was for the receivers and the Director General, and if the Director General did not want to assume the settlement he should not have assumed the defense and asserted his liability. Petitioner states that the Supreme Court of Missis-

sippi washed aside the receivership. All the Supreme Court did was to follow this Court in the *Ault case*. When the Director General substituted himself it could make no difference whether prior thereto the receivers of the railroad was named as the formal defendant. As a matter of substance it was the same and when the Director General assumed the defense all questions on that score were foreclosed. In fact, the only thing argued here by the Director General is that the rights of the receivers have been violated. The Director General must complain of some adverse ruling to himself and not the receivers. When the Director General asked to be admitted to defend, he knew all the facts, was the director general of all the roads and appeared as much for one as for another. He could not accomplish the release of the fund upon the ground that he was responsible, if anyone, and now contend in this Court the receivers were not properly in Court, thereby destroying the service *in rem*.

CONCLUSION.

Even if there were merit in the receivership proposition now advanced by petitioner, still we respectfully suggest it is not allowable for petitioner to seek and obtain a writ of *certiorari* to this Court and ask that it review the alleged action of the Mississippi Supreme Court in impounding the fund, when such facts do not exist, and then now to advance the receivership proposition. Of course, if this Court takes jurisdiction on a ground stated in the petition for the writ, and then upon the hearing that ground is found to exist, the Court will consider any other matter or fact

in the case, but we do not believe that where, as here, the ground upon which the writ is sought, is found not to exist in the case, that the Court will consider it from any standpoint. We do not mean to imply at all that petitioner or his counsel intended to mislead the Court, and the fact that they did not so intend is apparent, because even now counsel urgently insist that the fund has been impounded when, in fact, it has not. Counsel confuse the decree of the Chancery Court of Mississippi with the decree of the Supreme Court of Mississippi, and we repeat that their entire argument takes the decree of the Chancery Court as its basis.

But, be this all as it may, the Director General asked to be admitted to defend on the ground that he was liable if anyone was. He claimed the fund was his property, and it should be released. This was done at his instance and request and the other defendants discharged, also at his request. Now his request having been complied with by the Court he contends the fund was that of the receivers, and that he is not the party to sue. It is immaterial whose property the fund was as it has been released. The Director General assumed the defense of the case for all other defendants. The Director General says in his motion to substitute himself as defendant that it arose out of his operation of the carriers and on this ground procured the release of the other parties, and but for this substitution the case could never have come here.

It would be unjust, therefore, now for the Director General to be even heard to say that he is not responsible for

the debt. The natural consequences to follow his substitution, upon the grounds stated by him, was to render the decree against him as such substitute and he is complaining of the very ruling he himself invoked.

We respectfully submit that the Supreme Court of Mississippi has followed to the letter the ruling of this Court in the *Ault case, supra*, and that the *Ault case* is direct and controlling authority for the decree of the Supreme Court of Mississippi, and that the case should be affirmed.

Respectfully submitted,

W. A. White

Counsel for Respondent.

W. H. WHITE,
E. J. FORD,
Of Counsel.

We hereby certify that we have this 12th day of January, 1923, deposited in the postoffice at Gulfport, Mississippi, postage prepaid, two copies of the foregoing brief addressed to Messrs. Carl Fox and R. C. Beckett, counsel for petitioner, at their postoffice address, St. Louis, Mo.

W. A. White

Counsel for Respondent.

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No. 228

Supreme Court of the United States

October Term, 1922.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT OF THE UNITED STATES UNDER SECTION 206, TRANSPORTATION ACT, 1920, OPERATING MOBILE & OHIO RAILROAD, PETITIONER,

vs.

L. N. DANTZLER LUMBER COMPANY, RESPONDENT.

REPLY BRIEF FOR PETITIONER.

CARL FOX,
R. C. BECKETT,
Counsel for Petitioner.

Supreme Court of the United States

October Term, 1922.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT OF THE UNITED STATES UNDER SECTION 206, TRANSPORTATION ACT, 1920, OPERATING MOBILE & OHIO RAILROAD, PETITIONER,

vs.

L. N. DANTZLER LUMBER COMPANY, RESPONDENT.

REPLY BRIEF FOR PETITIONER.

In replying to the brief filed for the Respondent, it is necessary first of all to call attention to certain differences in phraseology, inaccuracies, and misconceptions as to the facts as stated therein, although these are so numerous that the correction of them all is somewhat tedious.

The first sentence in the brief for Respondent states:

> "The Receivers of the Texas & Pacific Railway contracted with Respondent for the transportation over its own line and others of a

large shipment of cattle from Fort Worth, Texas, to Howison, Mississippi."

And again on p. 11 of the brief for Respondent occurs the statement:

> "But the solvency or insolvency cuts no figure. The Receivers contracted this liability."

The original bill as well as the supplemental bill in this case contain no reference whatever to any receivership. They state that the defendant is "The Texas & Pacific Railway Company" (R. p. 6, 136). The Receivers have not been made parties to this suit in any way.

In the first three sentences in the brief for Respondent counsel use the name, "The Texas & Pacific Railway" in speaking of the principal defendant, whereas the record shows that the correct name of the principal defendant was, "The Texas & Pacific Railway Company." In other places it is not clear whether the words "Texas & Pacific Railway" mean the Corporation or the Director General. The brief states:

> "The Mobile & Ohio Railroad with other carriers was garnished and the Mobile & Ohio on June 17, 1918, filed its answer (R. pp. 71-74)."

This statement is inaccurate. The record shows that the Mobile & Ohio Railroad Company was garnished and the answer was filed in the name of the Mobile & Ohio Railroad Company. Through-

out the brief there is not one mention of the Texas & Pacific Railway Company or the Mobile & Ohio Railroad Company. The leaving off of the word "Company" from the name of these parties frequently allows the sentence to leave a doubtful impression as to whether the Corporation is referred to or the Director General operating the railroad.

For example of this confusion in thought, note the sentence at the bottom of p. 6 and the top of p. 7 of Respondent's brief:

> "Replying further to Petitioner's brief it is stated that the Director General of the Mobile & Ohio did not owe the Texas & Pacific anything. The answer admits the indebtedness."

As a matter of fact, the statement referred to from Petitioner's brief is found near the bottom of p. 2:

> "The Director General of the M. & O. did not owe the Texas corporation anything, but carried on his books to the credit of the Director General of the T. & P. an amount of money which may be called a quasi debt."

Throughout Respondent's brief the Director General of Railroads is referred to frequently, but at all times there is failure to distinguish between the Director General operating the Mobile & Ohio and the Director General operating the Texas & Pacific, and frequently this omission to distinguish between these two separate legal entities is conducive to dangerous confusion of thought.

On p. 3 of Respondent's brief there is a quotation as follows:

> 1. "This suit is based on a cause of action arising out of the possession, use or operation by the President of the United States of the railroad or system of transportation of the Mobile & Ohio Railroad."

This statement is quoted from the motion of the Director General of the M. & O. to have the name under which he was garnished changed from "Mobile & Ohio Railroad Company" to "James C. Davis, Director General of Railroads, as the Agent designated by the President under the provisions of Section 206 of the Transportation Act, 1920." The suit referred to as growing out of the operation of railroads during Federal control was not the principal cause of action against the Texas & Pacific Railway Company, but the alleged debt of the Director General of the M. & O., since that debt arose during the period of Federal control and that debt was the sole ground for making the Director General of the M. & O. or the Mobile & Ohio Railroad Company a party to the suit.

At the foot of p. 3 and the top of p. 4 of Respondent's brief it is stated:

> "The Supreme Court of Mississippi sustained the motion (R. p. 179) and all writs of garnishment including the one against the Mobile & Ohio Railroad were at the instance of the Director General discharged and the Mobile & Ohio Railroad was dismissed from the suit and the judgment was rendered against the Director General (R. p. 180)."

This statement is totally incorrect. The record shows that James C. Davis, Director General of Railroads, etc., made a motion that his name be substituted as defendant to the garnishment instead of Mobile & Ohio Railroad Company (R. p. 177-178). The Court sustained the motion (R. p. 179). The Director General did not ask that the suit be dismissed as to anybody. Subsequently the judgment of the Supreme Court (R. p. 180) shows that the suit was dismissed as to Mobile & Ohio Railroad Company. The dismissal of the Mobile & Ohio Railroad Company was not done at the instance of the Director General. If the suit was dismissed as to any other defendant, or if any other writs of garnishment were discharged, the record does not show it and the Director General of the M. & O. had nothing to do with it.

The statement in the brief for Respondent near the middle of p. 4 that all questions of garnishment or attachment became academic, moot, and immaterial is utterly incorrect. The entire basis of the jurisdiction of the Chancery Court of Harrison County, Mississippi, in this suit is based on the garnishment served on the Mobile & Ohio Railroad Company under the provisions of Section 536 of the Code of Mississippi, 1906. If that garnishment should be quashed, this suit must necessarily fall because there was no service except by publication upon the principal defendant. As explained in our original brief (pp. 21-22), the Supreme Court of Mississippi has held that the jurisdiction of the Court in suit a suit depends entirely upon bringing under the control of the Court

the res in question, being in this case the so-called debt owing to the non-resident defendant.

The statement near the center of p. 4 of Respondent's brief that the Supreme Court of Mississippi rendered the decree Petitioner maintained should be rendered is absurd. The only decree rendered by the Supreme Court of Mississippi which this Petitioner maintains should be rendered was the interlocutory decree substituting the name, "James C. Davis, Director General of Railroads, Agent," instead of "The Mobile & Ohio Railroad Company." After this substitution was made, the Director General continued under that name vigorously to contend that the suit ought to be dismissed as to him because he was brought into court only as a garnishee and the alleged debt was not legally a debt and it was not subject to attachment or garnishment, and for other reasons as set out in the pleadings. After the final decree was given against the Director General of the Mobile & Ohio, he filed a suggestion of error, thus continuing to the last possible moment to endeavor to show the Supreme Court of Mississippi its error in giving a decree against him.

At the foot of p. 4 of Respondent's brief occurs two sentences denominated, "Brief of the Argument." The first part of the first sentence is a statement of law with which we disagree. The second half of the first sentence states that the rights of the Lumber Company would not be suspended during Federal control, and to this statement we fully agree. It is our view that under the decision of this Court in the Ault Case the Lumber Com-

pany had the right to sue the Texas corporation if they had a claim, as set out in their original bill of complaint, against the Texas corporation, but we do not think they had a right to sue the Director General of the T. & P. on account of a cause of action against the Texas corporation.

The second sentence in said "Brief of the Argument" is evidently based on the same misconception of fact which runs throughout the entire brief of counsel for Respondent. The Director General did not substitute himself as defendant upon the ground he was the proper defendant and did not procure the dismissal of the other defendants and then claim he was not the proper party to sue. It can not be too clearly borne in mind that all that the Director General of the M. & O. did was to have the name under which he was originally brought into the suit by the writ of garnishment corrected from the name, "Mobile & Ohio Railroad Company" to the name provided by the Transportation Act, 1920, "James C. Davis, Director General, as Agent."

On p. 5 of Respondent's brief, under the heading "Argument and Authorities," counsel disposes of the question of the validity of the garnishment in this suit by saying that the question is not involved. They say:

> "The only garnishment of any fund took place in the Chancery Court of Harrison County, Mississippi, and the Supreme Court of Mississippi dismissed all the garnishments and discharged the garnishees."

That statement is simply not supported by the

record. The record shows nothing with reference to any other garnishment than that which was served on the Director General of Railroads under the name "Mobile & Ohio Railroad Company" and the final judgment entered in the Supreme Court of Mississippi (R. p. 180) shows the name of the case at that time, "James C. Davis, Director General, Mobile & Ohio Railroad Company vs. L. N. Dantzler Lumber Company," and gives judgment against "James C. Davis, Director General, Agent of the United States," in the sum of $3,052.94, "the amount of the decree rendered in the court below." While the judgment does not name James C. Davis as Director General of the Mobile & Ohio, the heading at the top of the judgment shows that the judgment was given against him in his capacity of the Director General of the Mobile & Ohio Railroad and the amount for which the judgment was given was for exactly the amount which the Director General of the M. & O. admitted that his books showed he was carrying to the credit of the Director General of the T. & P., except that his answer showed the amount of the debt as being $3,053.94 (R. p. 74) and the decree of the Chancellor ordered him to pay into court $3,053.94 (R. p. 169). The Supreme Court gave a final judgment for $3,052.94, saying it was the amount of the decree rendered in the court below, whereas there is a discrepancy of one dollar, which is evidently only a typographical error. The amount of the principal claim against the Texas corporation was $6,552.00 (R. p. 168). So it is evident that this judgment was given against the Director General

of the M. & O. on account of the garnishment which was served on him and on account of his answer which admitted this amount of money was shown on his books as being carried to the credit of the Director General of the T. & P.

At the top of p. 6 of the brief for Respondent counsel attempt to dispose of our second proposition of law by the same misstatement of fact. The paragraph in the middle of p. 6 of Respondent's brief again states that plaintiff's principal claim was one against the Receivers for an act of their own during the receivership. This is in contradiction to the statement of plaintiff's claim as set out in the original bill and is gleaned from the amended answer of the Director General. Yet this is the very fact which the Supreme Court of Mississippi held in its opinion that the garnishee could not set up (R. p. 187). It must be borne in mind that the principal defendant in this case was the Texas & Pacific Railway Company, the corporation; the Receivers were not parties. The amended answer of the Director General showed that at the time of the alleged injury to the cattle which formed the basis of the suit, the railroad was being operated by the Receivers, which would have the effect of showing that the Complainant (Respondent here) had no cause of action against the corporation. But the Supreme Court would not allow the garnishee to set up that fact. As explained in our first brief, we did not set up the fact of the existence of the receivership for the purpose of showing that as a defense to the principal claim, but for the purpose of showing that the

Director General did not take over the operation of the Texas & Pacific Railway from the Texas corporation, but from the Receivers, so that he could not by any construction have made himself liable for the debts of the corporation. Yet now, with a complete change of front, counsel for Respondent boldly state in their brief that their claim was against the Receivers and not against the Texas corporation. Since they claim that fact is true, let us admit it is true and see what effect it will have. It will show that the Lumber Company had no claim against the principal defendant in this case, the Texas corporation, and therefore, there is no basis to support the garnishments which were issued. This would result, of course, in the whole suit falling to the ground.

At the top of p. 7, of Respondent's brief it is stated:

> "On p. 3 of brief Petitioner states that the Director General was not made a party in any way."

This statement is incorrect. What we said on p. 3 of our brief was:

> "The Director General of the T. & P. was not made a party to this suit in any way."

This is another example of the persistent effort shown in counsel's brief to refuse to distinguish between the Director General of the M. & O. and the Director General of the T. & P. Yet if they are not distinguished one from another there would be no debt to furnish the basis for the justification of

the Chancery Court of Harrison County, Mississippi, and if there were no debt to be attached by garnishment, the Chancery Court of Harrison County, Mississippi, would have no jurisdiction and this whole suit would necessarily fall.

In the next sentence at the top of p. 7, counsel states:

> "We have pointed where he has substituted himself both in the lower court and in the Supreme Court and by his substitution procured the discharge of the parties defendant other than himself."

The Director General of the T. & P. did not substitute himself and did not appear in this suit in any way. The Director General of the M. & O. had his name corrected from the name under which he was rightfully garnished at the time the garnishment was served to the name provided by the Transportation Act, 1920, and he did not ask or procure the discharge of any other party defendant.

The statement at the center of p. 7, that the final decree of the Supreme Court of Mississippi discharged the fund (R. p. 180) and that there has been no effort to enforce the judgment in personam against the Director General shows the same utter misconception of the facts in this case. The Supreme Court of Mississippi merely vacated that part of the decree of the Chancery Court which ordered the money to be paid into court within thirty days, but it substantially continued the order in force by giving a personal judgment against the Director General of the M. & O. for the amount of

this so-called debt. Respondent can take no credit for the fact that there has been no effort to enforce this judgment. A petition for a writ of certiorari was promptly filed and granted, so that there has been no opportunity to enforce the judgment, even if it had been against a private individual. And, of course, judgments against the Government of the United States are never enforcible, but are usually complied with by the Government as a matter of grace. And it is evident that there is a lively hope burning in the breasts of counsel for Respondent that the Government will honor this judgment and pay this money to the Lumber Company in compliance with this judgment. Appeals are frequently taken by the Government of the United States from judgments against the United States, although they are non-enforcible, and for obvious reasons.

Near the top of p. 8 of Respondent's brief occur these two sentences:

> "In the pleadings filed by the Director General in the lower court he made the claim that the fund was his, and he sought to make a Federal question on that ground. Now in this court he claims in brief the fund was the property of the Receivers of the Texas & Pacific Railway."

This statement is absolutely incorrect. We know of no place in our brief where we claimed that the fund in question was the property of the Receivers. If such a statement occurs in our brief it is a misprint. We have claimed at all times and we now still claim very vigorously that the fund

in question which is the basis of jurisdiction in this suit is merely an amount of money carried on the books of the Director General of the Mobile & Ohio to the credit of the Director General of the Texas & Pacific. There is a substantial difference between the Director General of the Texas & Pacific and the Receivers of the Texas & Pacific. This debt, if it be a debt, is the property of the Director General of the Texas & Pacific.

Again, in the paragraph near the bottom of p. 8 of Respondent's brief, it is said:

> "Certainly the garnishee, being discharged, could do what he pleased with the fund. There is no decree in this case with reference to a fund."

For reasons previously stated, this statement is absolutely incorrect. The final judgment was given for the exact amount of the fund above referred to.

At the top of p. 9 of Respondent's brief it is said that we are in error in our brief in stating that the Chancery Court issued its order against the Director General of Railroads to pay the money into court and that the Supreme Court rendered a decree against the Director General for failure to pay the money into court. We claim this statement is absolutely correct. The decree of the Chancellor ordered the M. & O. Railroad Company to pay the money into court, but it was subsequently established by the Supreme Court that the name "Mobile & Ohio Railroad Company" was the name under which the Director General was being properly garnished at the time this suit was begun. In

its opinion on the final hearing of this case (R. p. 190) the Supreme Court of Mississippi said:

> "We must conclude that the answer of the Director General in the court below should have been treated by the Court as an application by the Director General to be substituted as the defendant instead of the Mobile & Ohio Railroad Company and substitution should have been made at that time, but an application to substitute in this court has been made and allowed, and as to the Director General it must be treated as though made by the court below and the answer of the Director General be treated in this suit as embracing both the amended answer and the original answer, as *the original answer was made by him and his Agent in the name of the Mobile & Ohio Railroad Company, which was the only way it could be made at such time.*"

Again, at the foot of p. 10 and the top of p. 11 of Respondent's brief, it is stated that the Director General "assumed the defense and procured the dismissal of the other defendants." And again, "The Director General can not in order to seek to make a Federal question substitute himself as defendant, procure the dismissal of the other defendants on the ground that he, not they, is liable if any one be, and then assert he is not liable because the action occurred prior to Federal control." This statement is simply an utter misconception of the facts and of the argument we have been making throughout this case and in our brief. As a matter of fact, it seems to us to be a result of the confusion of thought shown in Respondent's brief in declining to distinguish between the Di-

rector General of the M. & O. and the Director General of the T. & P. The same sort of contention is made again at the foot of p. 11 of Respondent's brief. The error into which counsel for Respondent has fallen is clearly shown in the two sentences near the center of the twelfth page:

> "When the Director General asked to be admitted to defend he knew all the facts, was the Director General of all the roads and appeared as much for one as for the other. He could not accomplish the release of the fund upon the ground that he was responsible if any one and now contend in this court the Receivers were not properly in court, thereby discharging the service in rem."

Counsel apparently have the idea that the Director General of Railroads is one person for the purpose of suit, so that, except for General Order No. 18, which was not in effect at the time this suit was brought, a person could have brought suit against the Director General on account of the operation of the Boston & Maine Railroad and gotten service on an agent of the Director General operating the Mobile & Ohio Railroad in Mississippi. As a matter of fact, this Court in the Ault Case held that the transportation systems remained separate during the period of Federal control for the purpose of suit, and that the Director General was a separate legal entity with reference to each system of transportation which he operated. And the Supreme Court of Mississippi in its opinion in this case clearly stated the same thing.

> "In such suit the different transportation systems being operated by the Government are treated as separate parties for the purpose of suit and accounting." (R. p. 181.)

In fact, if counsel for Respondent concede that the Director General of the M. & O. was the same legal person as the Director General of the T. & P., then the fund which the Director General of the M. & O. carried on his books to the credit of the Director General of the T. & P. could not possibly be considered a debt and therefore could not furnish the basis of the jurisdiction of the Chancery Court of Harrison County, Mississippi, in this suit.

On p. 13 of Respondent's brief it is stated that the other defendants were discharged at the request of the Director General, which statement is absolutely incorrect as herein previously shown. Again it is stated that we contend that the fund belonged to the Receivers, when, as a matter of fact, we have made no such contention. Again it is stated that the Director General assumed the defense of the case for all other defendants. This statement is absolutely unjustified by the record. We never stated at any time that the principal cause of action in this suit arose out of the operation of the carriers during Federal control. It was merely the debt which furnished the basis of jurisdiction in the garnishment suit in Harrison County, Mississippi, which arose during Federal control.

In conclusion, it is clear that counsel for Respondent are showing a complete change of front

in this brief. The reasons given by counsel for Respondent in their brief in support of the judgment rendered in the Supreme Court of Mississippi are utterly different and in hopeless conflict with the reasons given in the opinion of the Supreme Court of Mississippi to support its judgment (R. pp. 181 to 191). The Supreme Court of Mississippi upheld the jurisdiction in this case on the ground that (quoting from the official syllabus) "in such a suit another carrier being operated under Government control may be garnished and a judgment rendered against it for a debt it owes the principal defendant." (R. p. 181.) But counsel for Respondent now say that the garnishment feature of this case is moot and immaterial.

The Supreme Court of Mississippi said that a carrier under Federal control may sue on a cause of action arising before such control (R. p. 181). But counsel for Respondent now say that it is not necessary to so hold. That when the Director General of the M. & O appeared and had his name corrected in accordance with the requirements of the Transportation Act, 1920, he thereby appeared for all purposes and in all capacities and assumed liability for all the wrong complained of in the original bill.

The Supreme Court of Mississippi said the different transportation systems being operated by the Government are treated as separate parties for the purpose of suit and accounting, but counsel for Respondent say that when the Director General appeared he was the Director General of all

the roads and appeared as much for one as for another.

The Supreme Court of Mississippi said that the garnishee defendant could not set up the fact of the receivership being a defense against the principal claim in the suit (R. p. 181-182, 187), but counsel for Respondent now state that their principal claim in this suit was against the Receivers, although nowhere in the pleadings is that statement supported except in the amended answer of the Director General, and if that statement be accepted it necessarily has the effect of showing that the original bill filed against the Texas & Pacific Railway Company without making the Receivers parties was without merit and void, and furnished no basis for the issuance of garnishments.

We wish to take this opportunity of making a slight addition to our original brief. We stated in that brief that we had found no cases where suit had been filed against the Director General on a cause of action arising prior to Federal control. I have since found the following cases:

Bolton vs. Hines, 143 Ark. 601, 221 S. W. 459.

Hines vs. Platt, 233 S. W. 1114 (Tex. Civ. App. 1921).

Hines vs. Woodson, 280 Fed. 966 (U. S. C. C. A. 1922).

Standley vs. U. S. R. R. Administration, 271 Fed. 794.

On the question as to whether or not the fund carried on the books of the Director General of the

M. & O. to the credit of the Director General of the T. & P. is a debt within the meaning of Section 536 of the Code of Mississippi, 1906, it may be interesting to note the decision of the United States Circuit Court of Appeals in *Globe & Rutgers Fire Insurance Co.* vs. *Hines,* 273 Fed. 774 (certiorari denied, 42 Supreme Court 54, 256 U. S. ——.) In that case it was held that the Director General operating a railroad was not legally a different person from the Director General operating a barge line so as to create a liability from himself in one capacity to himself in another capacity, to which liability a fire insurance company might be subrogated.

Respectfully submitted,

CARL FOX,
R. C. BECKETT,
Counsel for Petitioner.

DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER SECTION 206 OF TRANSPORTATION ACT OF 1920, *v.* L. N. DANTZLER LUMBER COMPANY.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 228. Argued January 17, 1923.—Decided February 26, 1923.

Under the Federal Control Act, § 10, a carrier, or the Director General of Railroads, could not, during federal control, be subjected to garnishment in a state court. P. 286.

126 Miss. 812, reversed.

CERTIORARI to a judgment rendered by the Supreme Court of Mississippi against the Director General of Railroads as garnishee.

Mr. R. C. Beckett, with whom *Mr. Carl Fox* was on the briefs, for petitioner.

Mr. W. A. White, for respondent, submitted. *Mr. W. H. White* and *Mr. E. J. Ford* were also on the briefs.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

This case presents an asserted conflict between the laws of Mississippi, subjecting property to attachment, and the statutes of the United States which empowered the President to take control of the railroad transportation systems of the United States, and exempt their property from State processes. Act of August 29, 1916, 39 Stat. 619, 645; 40 Stat. 451. See also 41 Stat. 456.

The respondent, the L. N. Dantzler Lumber Company, herein called the Lumber Company, is a corporation of Mississippi. It filed a bill for attachment under the Code of Mississippi of 1906 against the Texas & Pacific

Railway Company, a non-resident of Mississippi, and certain other railroads, including the Mobile & Ohio Railroad Company, a Mississippi corporation, having officers and agents in the State.

The purpose of the bill was to subject the indebtedness of the defendant railroads to the Texas & Pacific Railway Company to the satisfaction of a claim for damages to a shipment of cattle from Ft. Worth, Texas, to a station in Harrison County, Mississippi. The shipment was evidenced by a bill of lading dated October 10, 1917.

The charge is that, by reason of the negligence of the railroad companies, the Lumber Company was damaged in the sum of $5,600, and for the payment of this amount a claim was rendered by the Lumber Company to the Texas & Pacific Railway Company. Payment was refused.

It is further charged that the several railroad companies are indebted to the Texas & Pacific Railway Company; and that the Lumber Company has the right to subject such sums to the satisfaction of its claim against the Texas & Pacific Railway Company, that company being a non-resident of Mississippi, and having no officer in the State upon whom service of process can be had. Personal service is prayed against those companies upon which it can be had, and service by publication upon those companies upon which personal service cannot be had, and that they make answer stating what funds of the Texas & Pacific Railway Company they have in their hands, and in what amounts they will be indebted to that company in the future, and that the respective funds in their hands be subjected to the demand of the Lumber Company.

The Mobile & Ohio Railroad Company alleged that the suit is one in attachment and that the company was made a party simply as garnishee in order that any indebtedness from it to the Texas & Pacific Railway Company

might be condemned to pay the demand of the Lumber Company and that the service for that process is mesne process and within the prohibition of the act of Congress, violates that act and is void.

A statement of its indebtedness to the Texas & Pacific Railway Company was attached to the answer showing an indebtedness of $3,053.94.

The company further answering, alleged that on December 26, 1917, the President of the United States took possession of and assumed control of the transportation systems of the United States, including the Mobile & Ohio Railroad Company and the Texas & Pacific Railway Company and proclaimed in part, as follows: "Except with the prior written assent of said Director General [a Director General was appointed by the President] no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers."

And further that Congress ratified the action of the President and provided for the control of the railroads by an Act approved March 21, 1918, c. 25, 40 Stat. 451, § 10 of which provides as follows: "No process, mesne or final, shall be levied against any property under such Federal control." And that any money due from the company to the Texas & Pacific Railway Company is property under federal control within the meaning of the President's proclamation and the act of Congress under the orders of the Director General appointed by the President.

A decree *pro confesso* was entered against the Texas & Pacific Railway Company, the decree reciting that the company had been summoned according to law, and having failed to appear and plead, answer or demur, the allegations of the bill were taken as confessed against the company.

Subsequently the cause was set down for hearing on the decree, the answer of the other railroads, including that of the Mobile & Ohio Railroad Company, and upon the motion of the latter to discharge it as garnishee. The motion was sustained and the writ of garnishment dismissed as to it. Relief against the other roads, moreover, was denied, the court being of the opinion that it had no jurisdiction. The dismissal was reversed on appeal by the Supreme Court of the State. 119 Miss. 328.

The Supreme Court stated the question to be whether the suit could be maintained by reason of the attachment, no other property of the Texas & Pacific Railway Company being within the State than the indebtedness of the Mobile & Ohio Railroad Company to the Texas & Pacific Railway Company.

The court decided the question in the affirmative, expressing a contrary view of the President's proclamation and the acts of Congress than that asserted by the Mobile & Ohio Railroad Company, and even intimating that otherwise the proclamation and acts would be an encroachment upon the power of the State. The court, besides, defined the words "mesne" to mean "intermediate, intervening, the middle between two extremes." This being the definition of "mesne" process, it was the conclusion of the court, as we understand its opinion, that the present proceeding was commenced under the law of the State by original process and did not incur the prohibition of § 10.

The conclusion and judgment were that the "Court below erred in discharging the Mobile & Ohio Railroad Company as garnishee, and in holding that it had no jurisdiction to proceed to determine the controversy before it."

Upon return of the case a supplemental bill was filed and a new garnishment served on the Mobile & Ohio Railroad Company.

The company answered the bill repeating, in effect, its former answer and making other defenses not of importance to consider.

The Director General filed what he called an amended answer to the bill, averring that his former answer was filed in the name of the Mobile & Ohio Railroad Company, and was intended to be and was, in fact, the answer of the Director General, and the indebtedness admitted therein to be due the Texas & Pacific Railway Company was the indebtedness of the Director General, and not the indebtedness of the Mobile & Ohio Railroad Company. It set forth, as the answer of the Mobile & Ohio Railroad Company had done, that on December 26, 1917, the President by proclamation issued in pursuance of law, took possession of the railroad transportation systems of the United States, including the property of the Mobile & Ohio Railroad Company. The Director General of Railroads was created by the President, to whom the present Director General is the successor, and as such, was at the time of the summons against the Mobile & Ohio Railroad Company operating the same, and that the latter company has not been in possession or control of, nor has it operated or had anything to do with the operation of that railroad since December 28, 1917.

And the Director General further answered that after the answer of the Mobile & Ohio Railroad Company was filed, in order to avoid confusion, he issued General Order No. 50, afterward amended by Order No. 50–A, providing that suits or causes of action arising out of the operation of railroads by him should be brought against him and not against the railroad companies. And further that after the Mobile & Ohio Railroad Company (and other railroad companies) was taken over by him the account between it (and other railroad companies) was continued as before Government control, and that in "the sense that there was money due from the Director General on account of

his operation of the Mobile and Ohio Railroad to the Director General on account of his operation of the Texas and Pacific Railroad, there was an indebtedness as set out in the original answer filed herein; but that it was not a debt in the true sense of the word or within the meaning of the laws of Mississippi, subjecting debts to garnishments in cases of this kind." And he prayed to be dismissed with costs.

Of the second trial of the case it is only necessary to say that the court refused to let the Mobile & Ohio Railroad Company out of the case, or the Director General into it (the answer of the Director General was struck out on motion of the Lumber Company), and the Texas & Pacific Railway Company having failed to appear, a decree was rendered against it in favor of the Lumber Company in the sum of $6,552.00.

It was further decreed that there was an admitted indebtedness from the Mobile & Ohio Railroad Company to the Lumber Company in the sum of $3,053.94 which was ordered to be paid into the Chancery Court of Harrison County, Mississippi, within thirty days . . . to be disbursed in accordance with the decree.

An appeal was taken by the Mobile & Ohio Railroad Company to the Supreme Court and in that court, James C. Davis, Director General of Railroads, as Agent of the United States, operating the Mobile & Ohio Railroad Company, was substituted as defendant, the court saying: "The record now makes the Director General, an agent of the United States Government, the defendant in the garnishment."

The court reversed the decree of the Chancery Court against the Mobile & Ohio Railroad Company, deciding that it should have been discharged as garnishee, and ordered a decree against Davis as Director General for the sum of $3,053.94 with interest at 6% from June 29, 1920, until paid. To review that judgment is the purpose of this certiorari.

In its opinion upon the second appeal the court reaffirmed the view expressed upon the first appeal and sustained the validity and operation of the state statute against the acts of Congress and the proclamation of the President, rejecting the defense set up that the carrier was an instrumentality or agency of the Federal Government, citing *Missouri Pacific R. R. Co.* v. *Ault*, 256 U. S. 554.

It was deduced from that decision that the Director General was to be treated as a Director General of each separate system of transportation and, that the separate systems being operated by the Director General, are separate parties within the meaning of the purposes of the Federal Control Act, and that, therefore, the judgment against the Mobile & Ohio Railroad Company was, in effect, in view of the substitution made, a judgment against the Director General of the Mobile & Ohio Railroad Company and that the Lumber Company was entitled to recover.

It was, however, decided that the Director General could not be required to pay the amount of the judgment into court but that the Lumber Company would have to secure it in a manner provided for by the Federal Control Act.

We think the decision of the Supreme Court is based on a misunderstanding of the *Ault Case*. The liability of the Texas & Pacific Railway Company occurred before the Mobile & Ohio Railroad Company passed under government control, and while the liability continued and the Texas & Pacific Railway Company was subject to suit after the assumption of such control, necessarily, the procedure had to be in accordance with the acts of Congress.

As to what this procedure should be, the contentions of the parties are in conflict. We have seen that the Supreme Court upon the first appeal, 119 Miss. 328, decided that a carrier, though operated under government

control, might be subject to garnishment and that judgment could be rendered against it for a debt it owed to the principal defendant, and further, that the indebted company—in this case the Mobile & Ohio Railroad Company—could not plead any defense which was personal to the principal defendant—in this case the Texas & Pacific Railway Company. From these conclusions the court considered it was not precluded by § 10 of the Federal Control Act, which provided that "no process, mesne or final, shall be levied against any property under such Federal control."

This makes the question in the case.

The Lumber Company contests the pertinency of the provisions and their control. It asserts that no decree *in rem* had been rendered in the case, and that "the final decree of the Supreme Court of Mississippi discharged the fund, and this court is dealing solely with a judgment *in personam* against the Director General, which there has been no effort to enforce." In other words, it is said, "The Supreme Court expressly released the fund and rendered a decree *in personam*, and not a word in the decree or the opinion relates to a refusal to pay the money into court, but the opinion expressly provides this is not to be done or any other sort of execution to issue."

And again, the contention is, that the Lumber Company "was proceeding as it unquestionably had a right to, but for Federal control, and the Director General came into the suit saying in effect, 'because of Federal Control I am the one to sue'," and procured dismissal of the other defendants.

And further: "He cannot assume the liability for the purpose of raising or attempting to raise a federal question, and then deny the liability on the merits." It would be unjust therefore, is the contention, "now for the Director General to be even heard to say that he is not responsible for the debt", and "the natural consequences to

follow his substitution, upon the grounds stated by him, was to render the decree against him as such substitute and he is complaining of the very ruling he himself invoked." And this, it is contended, contravenes the *Ault Case*.

The view is partial and overlooks antagonistic things—overlooks that the Mobile & Ohio Railroad Company was made a defendant through garnishment, attempting thereby to defeat the provision of the Federal Control Act which provides "no process, mesne or final, shall be levied against any property under such Federal control." And the prohibition was necessary to the unity and effectiveness of control in the President and, under him, in the Director General. Such is the ruling in the *Ault Case* where it is decided that the railroad systems could be "dealt with as active responsible parties answerable for their own wrongs," but it was also decided that "levy or execution upon their property was precluded as inconsistent with the Government's needs". "Thus, under § 10", is the declaration, "if the cause of action arose prior to government control, suit might be instituted or continued to judgment against the company as though there had been no taking over by the Government, save from the immunity of physical property from levy . . ."

To repeat, the right of suit against the carriers was decided, but there was also decided the exemption of their property from levy or execution. The garnishment proceedings against the Mobile & Ohio Railroad Company were an infraction of the exemption—an infringement of the prohibition of the proclamation of the President and congressional enactments. It is not excluded from the condemnation because it is a procedure under the statutes of the State.

The defense was seasonably made. It is to be remembered that the Mobile & Ohio Railroad Company, im-

mediately in the proceeding against it, attacked the jurisdiction of the court and adduced the proclamation of the President exempting the property of any of the railroad systems of the United States from process, and also adduced § 10. The attack was successful in the trial court. It was declared impotent by the Supreme Court of the State and the case was remanded for further proceedings in accordance with the law of the State, that is, in execution of the garnishment proceedings against the indebtedness of the Mobile & Ohio Railroad Company to the Texas & Pacific Railway Company. The Director General then entered the case and took up the contest commenced by the Mobile & Ohio Railroad Company against the law of the State and the jurisdiction of the state court to enforce it.

This the Director General did, and nothing more. In other words, the Director General contested the jurisdiction and power of the court to proceed against property under the control of the United States, and which the proclamation of the President and the statutes of the United States had exempted from state control.

Reversed and remanded for further proceedings not inconsistent with this opinion.